



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession pursuant to a ten day notice to end tenancy and for a monetary order to recover the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves. The landlord's agent also attended the conference call.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order to recover the filing fee?

Background and Evidence

The tenancy started in 2010. The landlord purchased this duplex in May 2017 and the tenant who is also the landlord's brother was already renting one side of the duplex. The landlord moved into the other side. There is no written tenancy agreement and the parties could not agree on the amount of the current monthly rent. The landlord stated that the rent is \$1,400.00 while the tenant argued that it was \$1,200.00. The tenant also stated that he has been paying \$1,200.00 to the landlord since May 2017.

However, the parties agreed that rent for the months of September and October were not paid. The tenant also agreed that he received a ten day notice to end tenancy that was dated September 10, 2018. The tenant stated that it was posted on his door.

The notice indicates that rent for September 2018 in the amount of \$1,400.00 that was due on the September 01, 2018 was outstanding. The tenant stated that he attempted to pay rent but the landlord did not accept it. The landlord denied having refused to accept rent.

The tenant filed documentary evidence consisting of photographs and written statements regarding the condition of the rental unit. The tenant stated that by filing this evidence he assumed that he had filed an application to dispute the notice to end tenancy. The tenant filed this evidence on September 25, 2018 which is 12 days after the date that the tenant is deemed to have received the notice to end tenancy.

The landlord is applying for an order of possession effective two days after service on the tenant and for a monetary order in the amount of \$100.00 for the filing fee.

Analysis

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. The tenant is deemed to have received the notice to end tenancy for unpaid rent, on September 13, 2018, and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

Since the landlord has proven his case he is entitled to the recovery of the filing fee of \$100.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession **effective two days after service** on the tenant and a monetary order for **\$100.00**.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 30, 2018

Residential Tenancy Branch