



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, OPL, MNR, CNR, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel a ten notice to end tenancy for unpaid rent.

The notice of hearing was served on the tenant on November 01, 2018 in person. Despite having been served the notice of hearing and having made application for dispute resolution, the tenant did not attend the hearing and therefore the tenant's application is dismissed.

The landlord's agent attended the hearing and was given full opportunity to present evidence and make submissions. During the hearing the landlord requested to amend his application to include the retention of the security deposit in partial satisfaction of his monetary claim.

Issues to be decided

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

Background and Evidence

The tenancy started in December 2017. The current monthly rent is \$700.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$350.00

The landlord testified that the tenant fell behind on rent and as of August 01, 2018 the tenant owed \$160.00 in unpaid rent. In addition, the tenant failed to pay rent for August 2018 and for September 2018. On September 29, 2018; the landlord served the tenant in person with a ten day notice to end tenancy for unpaid rent in the amount of \$1,560.00.

The tenant disputed the notice nine days later and continued to occupy the rental unit without paying rent. At the time of this hearing on November 16, 2018, the tenant also owed the landlord rent for October and November 2018 for a total of \$3,060.00 in unpaid rent.

The landlord is applying for an order of possession effective two days after service on the tenant and a monetary order in the amount of \$3,060.00 for unpaid rent. The landlord is also applying for \$100.00 for the filing fee and to retain the security deposit in partial satisfaction of his monetary claim.

Analysis

Based on the undisputed sworn testimony of the landlord and in the absence of evidence to the contrary, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on September 29, 2018 and did not pay rent within five days of receiving the notice to end tenancy, 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.

I find that the landlord is entitled to \$3,060.00 for unpaid rent. Since the landlord has proven his case, he is also entitled to the recovery of the filing fee of \$100.00. The landlord is currently holding a security deposit of \$350.00.

I order that the landlord retain the security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$2,710.00. 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 in the amount of **\$2,710.00**.

The tenant's application is dismissed.

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: November 16, 2018

Residential Tenancy Branch