



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that on November 9, 2018 he forwarded the landlord's application for dispute resolution hearing package ("application") via registered mail to the tenant. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the application and supporting documents on November 14, 2018, the fifth day after its registered mailing.

Preliminary Issue – Amendment of Landlord's Application

The landlord confirmed that he wished to amend the landlord's application to increase his monetary claim to include November and December unpaid rent of \$1,800.00 total. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if he did not pay the rent or vacate the rental unit to allow it to be re-rented. Based on the undisputed evidence and in accordance with section 64(3)(c) of the *Act*, I amend the landlord's application to include a monetary claim for November and December 2018 unpaid rent of \$1,800.00 total.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy began in December of 2009 on a month-to-month basis. The landlord testified that a written tenancy agreement existed; however it was destroyed in a recent flood. Rent in the amount of \$900.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$450.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The landlord testified that he served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") in person to the tenant on October 4, 2018. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the 10 Day Notice on October 4, 2018, the date it was personally served.

The landlord seeks a monetary order of \$2,000.00 for unpaid rent for September, October, November and December 2018. The landlord claimed that the tenant has paid \$1,600.00 in rent for the above four months. The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Section 52 of the *Act* provides that in order to be effective, a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Upon review of the 10 Day Notice before me, I find the 10 Day Notice does not comply in content. The 10 Day Notice indicates a service date, but it remains unsigned and

undated. For this reason I find that the landlord is not entitled to an order of possession and dismiss this portion of the landlord's application without leave to reapply.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$900.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent for September, October, November and December 2018. Therefore, I find that the landlord is entitled to \$2,000.00 in rent.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee paid for the application, for a total award of \$2,050.00.

Conclusion

The landlord's application for an order of possession is dismissed without leave to reapply. The tenancy will continue until it is ended in accordance with the *Act*.

I issue a monetary order in the landlord's favour in the amount of \$2,050.00.

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: December 17, 2018

Residential Tenancy Branch