



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STANMAR SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing dealt with the adjourned Direct Request Application by the Landlord filed under the Residential Tenancy Act (the “*Act*”), for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the Notice) issued on July 6, 2018, a monetary order for unpaid rent, and to recover the filing fee paid for this application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in his testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlords submitted Canada post tracking number as evidence he had served the Application for Dispute Resolution, and Notice of Hearing had by registered mail on December 21, 2018. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days later. I find that the Tenant had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to an order of possession pursuant to section 46 of the Act?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The Landlord testified that the tenancy began on October 1, 2017, as a month to month tenancy; rent in the amount of \$950.00 is to be paid by the first day of each month and that the Tenant had paid a \$475.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that he served the Tenant with the Notice to End for Tenancy by attaching it to the Tenant's door on May 15, 2018, with an effective date of May 28, 2018. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

When asked why the Landlord has taken so long to apply to enforce the Notice, the Landlord testified that the Tenant had been in the hospital at the time the Notice was served and that he had been trying to work with her and her family to allow her to remain in the rental unit.

The Landlord testified that the Tenant had not paid the rent since he served the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the undisputed testimony of the Landlord that this tenancy began on October 1, 2017.

I have reviewed the Notice to end tenancy submitted into evidence by the Landlord, and I find that the notices recorded that the Tenant was outstanding in her rent for May 2010. As this tenancy started on October 1, 2017, I find that there can be no rent due for May 2010. Therefore, I find that the Landlord's Notice is invalid as is it requesting the payment of rent for a period of time in which the current Tenant did not live in the rental unit.

I find the Notice dated May 15, 2018, is of no effect, and that this tenancy continues until it is ended in accordance with the *Act*.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in his application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for his application.

Conclusion

I dismiss the Landlord's application and find that the 10-Day Notice dated May 15, 2018, is of no effect under the *Act*.

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: January 17, 2019

Residential Tenancy Branch