



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

On December 6, 2018, the Landlord filed an Application for Dispute Resolution by Direct Request. The Landlord was seeking an order of possession for the rental unit due to unpaid rent or utilities and for a monetary order to recover unpaid rent or utilities.

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act*. The ex-parte review was completed and a Decision was issued on December 10, 2018. The adjudicator found a discrepancy in the tenancy agreement and ordered the matter be heard by participatory hearing. The Landlord was ordered to serve the Tenants a Notice of Reconvened Hearing.

The Landlord and Tenant appeared at the hearing. The Tenant was assisted by family members. The Tenant testified that she was provided the information regarding the date and time of this hearing from the Residential Tenancy Branch. While there was no documentary evidence from the Landlord regarding service, I find that the Tenant was sufficiently notified of the hearing.

Preliminary and Procedural Matters

The Landlord testified that he is not pursuing a monetary order against the Tenant. The Landlord is seeking an order of possession for the rental unit due to a breach of the tenancy agreement regarding payment of rent.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties agreed that the tenancy began on June 15, 2017, as a one year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,400.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$700.00 and a pet damage deposit of \$700.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 14, 2018 ("the 10 Day Notice").

The Landlord testified that the Tenant was served with the 10 Day Notice by posting the Notice on the Tenant's door on at 9:45 am on November 14, 2018. The Landlord provided a copy of the 10 Day Notice.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$1,274.00 which was due on November 1, 2018. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that he received an e-transfer payment in the amount of \$1,000.00 from the Tenant's mother on November 26, 2018.

The Landlord submitted that the amount received towards rent was not the full amount owing and the payment was received more than five days after the Tenant received the 10 Day Notice.

The Landlord is seeking an order of possession for the rental unit due to a fundamental breach of the tenancy agreement regarding payment of rent.

There is no evidence before me that the Tenant made an application to dispute the 10 Day Notice.

In reply, the Tenant provided testimony that she received the 10 Day Notice; however, she was not sure of the date it was received.

The Tenant testified that as soon as she received the documents from the Landlord she called the Landlord to try and make payment arrangements. She testified that she informed them that she is trying to find roommates. She testified that she also contacted her mother for assistance. She testified that the rent was paid late because she is waiting for disability payments.

The Tenant testified that she did her best to make arrangements but the rent was paid late.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the 10 Day Notice is deemed to have been received by the Tenant on the third day after it was posted to her door. I accept the Landlord's evidence that the 10 Day Notice was posted to the Tenant's door on November 14, 2018. I find that the Notice is deemed received on November 17, 2018.

I find that the Tenant did not pay all the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice, and did not apply to dispute the Notice, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord testified that he is not pursuing a monetary order against the Tenant; therefore, I decline to award the cost of the filing fee.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement within five days of receiving a 10 Day Notice and did not file to dispute the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective two (2) days after service on the Tenant.

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 25, 2019

Residential Tenancy Branch