



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FFL

Introduction

On November 22, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession; for a monetary order for unpaid rent or utilities; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlords agent (“the Landlord”) and the Tenant attended the teleconference hearing.

The Landlord and Tenant were provided the opportunity to present evidence orally and in written and documentary form. The Tenant did not provide any documentary evidence in response to the Landlords application.

Issues to be Decided

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

Background and Evidence

The Landlord and Tenant testified that the tenancy began in June 2016, on a month to month basis. Rent in the amount of \$1,300.00 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 \$450.00. There is no written tenancy agreement.

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

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 5, 2018, ("the 10 Day Notice"). The 10 Day Notice indicates that the Tenant owes \$2,600.00 in rent that was due on November 1, 2018.

The Landlord testified that the Tenant was served with the 10 Day Notice in person on November 5, 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 Tenant did not dispute the 10 Day Notice. The Tenant testified that she received the 10 Day Notice on November 5, 2018.

The Tenant testified that she did not dispute the Notice because she paid the rent in full within five days of receiving the 10 Day Notice. She testified that she deposited \$3,100.00 into the Landlord's account within five days of receiving the 10 Day Notice.

The Landlord testified that the Tenant did not pay the rent owing within five days of receiving the 10 Day Notice. She testified that the Tenant deposited \$1,700.00 into the Landlords account on November 14, 2018, and deposited a further \$900.00 on November 26, 2018.

The Landlord's agent submitted that the Landlord is tired of dealing with repeated late payments of rent and wants an order of possession for the rental unit because the rent was not paid in full within five days of the Tenant receiving the 10 Day Notice.

The Tenant did not provide any documentary evidence prior to the hearing in response to the Landlord's application and in support of her testimony that the full amount of rent was paid to the Landlord within five days of receiving the 10 Day Notice.

The Tenant was provided with an opportunity to prove that the rent was paid within five days of November 5, 2018; the date she received the 10 Day Notice. The Tenant agreed to provide banking records to support her testimony that she deposited \$3,100.00 into the Landlords account within five days of her receiving the 10 Day Notice.

The Tenant was provided and confirmed the fax number for providing her evidence and was given until the end of the business day to provide the evidence. The Tenant was also directed to provide the Landlord with a copy of the evidence.

On January 8, 2018, the Residential Tenancy Branch received a two page fax from the Tenant indicating that she went to a credit union to obtain receipts. She submitted that when she made the rent payment into the Landlord's bank, she was not provided a written receipt. The Tenant provided a copy of an e-transfer record indicating that on November 26, 2018 the Landlord received an e-transfer of \$900.00.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

The Tenant did not dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 5, 2018. The Tenant failed to provide sufficient evidence to support her position that the 10 Day Notice did not need to be disputed because the rent was paid within 5 days of receiving it. The Tenant's evidence is inconsistent with her testimony that she deposited \$3,100.00 into the Landlords account sometime within five days of receiving the 10 Day Notice. The evidence the Tenant provided is consistent with the Landlord's testimony that on November 26, 2018, the Tenant paid \$900.00 of the rent. I find that the Landlord provided the stronger evidence that the rent was not paid within five days of when the Tenant received the 10 Day Notice.

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. I find that the Tenant has fundamentally breached the tenancy agreement with respect to paying the rent. The Tenant 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. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I authorize the Landlord to retain \$100.00 from the Tenant's security deposit in satisfaction of the \$100.00 filing fee.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 5, 2018, 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 10 Day Notice.

I order that the Landlord can keep the security deposit in the amount of \$100.00 in satisfaction of the filing fee.

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 10, 2019

Residential Tenancy Branch