



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR, MNRL-S, 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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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's application was originally initiated as a direct request proceeding, which is a non-participatory hearing. In an interim decision issued on November 19, 2018, an adjudicator determined that the matter was not appropriate for a non-participatory hearing and ordered that a participatory hearing take place. The interim decision directed the landlord to serve the tenant with a copy of the interim decision and a Notice of Reconvened Hearing (the "hearing package").

The landlord testified that on November 23, 2018 she personally served the tenant the hearing package to the tenant. The landlord provided a signed 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 hearing package on November 23, 2018, the date it was personally served.

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 retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

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

Background and Evidence

As per the submitted tenancy agreement, and testimony of the landlord, the tenancy began on September 1, 2018 on a fixed term until August 30, 2019. Rent in the amount of \$1,100.00 and utilities in the amount of \$60.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$550.00 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 the tenant's boyfriend was personally served with the first 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") on November 2, 2018, at the rental unit. The landlord testified that although the tenancy agreement only allowed the tenant to occupy the unit, it was her belief the tenant's boyfriend also occupied the unit. As per section 88 of the *Act*, a notice to end tenancy must be must be served by leaving a copy with the tenant, sending a copy by regular or registered mail to the address where the tenant resides, leaving a copy at the tenant's residence with an adult that apparently resides with the tenant or attaching a copy to the door at the tenant's residence. I find the landlord has provided insufficient evidence to establish the boyfriend resided with the tenant, therefore I find that the landlord has not served the first 10 Day Notice to the tenant as required under the *Act*.

The landlord gave sworn testimony that she personally served the tenant with a second 10 Day Notice on December 2, 2018. The landlord attached a witnessed proof of service, signed on December 2, 2018, with her application. In accordance with section 88 of the *Act*, I find that the tenant was deemed served with the second 10 Day Notice on December 2, 2018.

The landlord seeks a monetary order of \$2,480.00 for unpaid rent and utilities from November 2018 to January 2019. The landlord claimed that the tenant has paid \$1,000.00 for the above three months. The landlord also seeks 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.

Based on the landlord's testimony and the second notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the overdue rent or file an application to dispute the notice, 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 unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

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 the landlord proved that the rent and utilities for this unit is \$1,160.00 per month. I find the landlord provided undisputed evidence that the tenant failed to pay full rent and utilities from November 2018 to January 2019. Therefore, I find that the landlord is entitled to \$2,480.00 in rent and utilities. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application for a total award of \$2,580.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$550.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$2,030.00.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of \$2,030.00.

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: January 10, 2019

Residential Tenancy Branch