



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FFL

Introduction

On November 25, 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 Landlord attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that the Tenant was served the Notice of Dispute Resolution Proceeding by registered mail on December 17, 2018. The Landlord testified that the registered mail was sent to the dispute address. The Landlord provided a copy of the registered mail receipt and tracking number as proof of service.

I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the *Act*. The Tenant is deemed to have received the Notice of Dispute Resolution Proceeding on December 22, 2018; the fifth day after it was mailed.

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

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 testified that the tenancy began on September 15, 2017. Rent in the amount of \$2,400.00 is to be paid to the Landlord by the fifteenth day of each month. The Tenant paid the Landlord a security deposit in the amount of \$1,200.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant was having difficulty paying the rent. The Landlord testified that she was lenient for a time but then outstanding amount became too great and she issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 17, 2018, ("the 10 Day Notice"). The Landlord testified that the Tenant was served with the 10 Day Notice by registered mail sent on October 17, 2018. The Landlord provided the registered mail receipt as proof of service.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$10,750.00 which was due on October 15, 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.

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

The Landlord testified that since March 2018, she did not receive the full amount of rent due each month. She testified that for the time period of March 15, 2018, to October 15, 2018, she received a total of \$8,450.00 in rent from the Tenant. The Landlord testified that \$10,750.00 in rent due under the tenancy agreement remained unpaid.

The Landlord testified that the Tenant did not pay the outstanding rent within 5 days of receiving the 10 Day Notice.

The Landlord testified that the Tenant has not paid her any rent since the 10 Day Notice was issued. The Landlord testified that she has not received the rent for November 2018, December 2018, and January 2019. The Landlord testified that the Tenant's possessions are still in the unit and it appears the Tenant is still living in the rental unit.

The Landlord requested to amend her application to include the unpaid rent of \$7,200.00 for the months of November 2018, December 2018, and January 2019.

The Landlord seeks an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$17,950.00.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant received the 10 Day Notice on the fifth day after it was mailed. The Tenant is deemed to have received the 10 Day Notice on October 22, 2018.

I find that the Tenant failed to pay 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.

I find that it is reasonable to permit the Landlord to amend her application to include a loss of rent for November 2018, and December 18, 2018. The Tenant knows that the tenancy agreement requires her to pay the rent; and the Landlord has suffered a loss. The Tenant was living in the rental unit during these months. The Landlords request to include \$4,800.00 to her claim for unpaid rent is granted. The request to include January 2019, rent is declined, since the rent is not due until January 15th.

I find that the Tenant owes the Landlord \$15,550.00 in unpaid rent.

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 find that the Landlord has established a total monetary claim of \$15,650.00 comprised of \$15,550.00 in unpaid rent for the above mentioned months and the \$100.00 fee paid by the Landlord for this hearing.

I grant the Landlord a monetary order in the amount of \$15,650.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement within five days of receiving the 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 and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$15,650.00.

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 11, 2019

Residential Tenancy Branch