



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

On December 4, 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; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord and the Landlord's agent, 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 sent on December 4, 2018. The Landlord provided the registered mail tracking information 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 served with the documents on December 9, 2018.

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 keep the security deposit towards 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 October 15, 2018, as a fixed term tenancy. The Landlord testified that rent in the amount of \$600.00 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 \$300.00. The Landlord provided a copy of a tenancy agreement.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the month of November 2018.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 23, 2018, ("the 10 Day Notice").

The Landlord testified that the Tenant was served with the Notice by registered mail sent on November 23, 2018, to the dispute address.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$600.00 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.

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

The Landlord testified that the Tenant owes rent for the following months:

- November 2018, in the amount of \$600.00
- December 2018, in the amount of \$600.00
- January 2019, in the amount of \$600.00

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$1,800.00.

The Landlord is seeking to keep the security deposit of \$300.00 in partial satisfaction of the claim for unpaid rent.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant did not 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 the Tenant has not paid the rent for three months and owes the Landlord \$1,800.00 for unpaid rent.

I order that the Landlord can keep the security deposit in the amount of \$300.00 in partial satisfaction of the claim for 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 \$1,900.00 comprised of \$1,800.00 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$300.00 towards the claim of \$1,900.00, I find that the Landlord is entitled to a monetary order in the amount of \$1,600.00. 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 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.

I order that the Landlord can keep the security deposit in the amount of \$300.00 in partial satisfaction of the claim.

The Landlord is granted an order of possession effective 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 \$1,600.00.

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 14, 2019

Residential Tenancy Branch