



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHARTWELL CONSTRUCTION
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing dealt with the adjourned Direct Request Application by the Landlord filed under the Residential Tenancy Act (the “*Act*”), for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the Notice) issued on January 1, 2018, a monetary order for unpaid rent, permission to retain the security deposit and to recover the filing fee paid for this application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in her testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were served to the Tenant by Canada Post Registered mail, sent on January 25, 2019, a Canada post tracking number was provided as evidence of service. I find that the Tenant had been duly served in accordance with sections 89 and 90 of the *Act*.

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

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to an order of possession pursuant to section 46 of the *Act*?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The Landlord testified that the tenancy began on March 1, 2005, as a month to month tenancy; that rent in the amount of \$1,308.00 is to be paid by the last day of each month and that the Tenant had paid a \$433.50 security deposit at the outset of this tenancy.

The Landlord testified that the Tenant served the Landlord with notice to end the tenancy on December 31, 2018, but that the Tenant did not pay the last months rent. The Landlord testified that she served the Tenant with the 10-Day Notice to End Tenancy for Unpaid Rent, by attaching it to the Tenant's door or other conspicuous place at January 1, 2019, with an effective date of January 12, 2019. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Property Manager testified that the Tenant has not paid the outstanding rent for January 2019 as indicated in the Notice, but that the Tenant had moved out of the rental unit in accordance with the Tenant's notice to end the tenancy. The Property Manager testified that the Tenant had not served her with notification that they had filed an application to dispute the Notice.

The Landlord is seeking a monetary order for the outstanding rent for January 2019.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

I find that the Tenant was deemed to have received the Notice on January 4, 2019, three days after it was posted to the front door of the rental unit. I also find that the Tenant had not paid the rent or disputed the Notice and is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

I find that the Landlord has established an entitlement to a monetary award for loss of rent for January 2019, in the amount of \$1,308.00, and is authorized to retain the Tenant's security deposit as partial satisfaction of this award.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has have been successful in her application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

I grant the Landlord a monetary order in the amount of \$974.50; consisting of \$1,308.00 in unpaid rent, \$100.00 for the recovery of the filing fee, less the security deposit of \$433.50 that the Landlord is holding.

Conclusion

I grant the Landlord a **Monetary Order** in the amount of **\$974.50**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order

may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 7, 2019

Residential Tenancy Branch