



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding YALE MANOR LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR FFL

Introduction

This review hearing dealt with the landlord's application pursuant to the *Residential Tenancy* for:

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its agent (the "landlord").

The tenant confirmed receipt of the landlord's application and evidence. The landlord confirmed receipt of the tenant's materials and Notice of Hearing. Based on the testimonies I find that the parties were served with these materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the decision of December 19, 2018 be upheld or replaced with a new decision?

Background and Evidence

This periodic tenancy began in October, 2010. The monthly rent is \$550.00 payable by the first of each month. The rental unit is a suite in a multi-unit rental building. The

landlord said that most residents pay by electronic fund transfer or direct deposit. On occasions when the tenants pay by cash receipts are issued by the property manager.

The landlord testified that according to their ledger the tenant is in arrears by \$1,650.00 as at the date of the hearing, March 25, 2019. The landlord said that the tenant had failed to pay rent for April, May and November, 2018 and a 10 Day Notice dated November 25, 2018 was issued for an arrear of \$1,650.00.

The landlord testified that the 10 Day Notice was served on the tenant by posting on the rental unit door on that date in the presence of a witness. The landlord submitted into evidence a signed Proof of Service form. The tenant disputes ever being served with the 10 Day Notice.

The tenant made a payment by e-transfer on December 17, 2018 for \$550.00. The landlord testified that since that time the tenant made one subsequent payment of \$1,650.00 sometime in February, 2019. The landlord said that both of the payments received were made by electronic transfer and while they were accepted for use and occupancy they did not reinstate the tenancy.

The tenant submits that they made cash payments for April and May, 2018. The tenant submitted into documentary evidence copies of the receipts they say they received from the landlord for those payments. The tenant confirms the amount and time of the payments made since the date of the 10 Day Notice. The tenant submits that by their calculation the current rental arrear is \$550.00 which they have chosen not to pay until they learn the outcome of this application.

The landlord's witness is the former property manager whose name is on the receipts submitted into evidence by the tenant. The witness denies having issued those receipts and testified that they are forgeries that do not resemble her hand writing or signature.

Analysis

Based on the conflicting testimonies I first make a determination on credibility. I have considered the testimonies of the parties, their content and demeanor as well as whether it is consistent with the other evidence and circumstances of this tenancy.

Considered in its totality, I prefer the testimony of the landlord to that of the tenant. The landlord gave reasonable testimony supported in documentary evidence. I found the

landlord's evidence to be forthright and consistent. The landlord was honest where memory failed them and referred to the documentary evidence to assist their recollection.

The landlord testified that the 10 Day Notice was served on the tenant by posting on the rental unit door in the presence of a witness. The landlord provided cogent recollection of the time and date service was performed and submitted into written evidence a copy of the Proof of Service form signed at that time. I do not find the tenant's submission that they were not served with the landlord's 10 Day Notice to be supported in the evidence or convincing given the weight of evidence. I am satisfied that the landlord has demonstrated on a balance of probabilities that the 10 Day Notice was served on the tenant in accordance with the *Act*. I find that the 10 Day Notice was deemed served on the tenant on November 28, 2018, three days after posting, in accordance with sections 88 and 90 of the *Act*.

The tenant disputes that there was an arrear of \$1,650.00 at the time the 10 Day Notice was issued and says that only \$550.00 was owed at that time. The tenant submits hand written receipts that they say were issued by the landlord. The landlord's witness disputes that the receipts are genuine. I accept the landlord's evidence that no rent was paid for the months of April and May 2018 and there was an arrear of \$1,650.00 as at the date of the 10 Day Notice. I accept the landlord's evidence that the receipts submitted by the tenant identify the wrong corporate entity, the signatures are different from that of the witness found in other documents and the receipt numbers do not correspond to a logical numbering system.

Furthermore, the tenant gave testimony that they have only made two rental payments after the date of the 10 Day Notice, on December 17, 2018 and in February 2019. The tenant testified that by their calculation there remains a rental arrear of \$550.00. The tenant acknowledged that they understood that the rental payments did not reinstate their tenancy and have withheld paying the full amount of the arrear until the results of this application were known.

Based on the totality of the evidence I find that there was a rental arrear of \$1,650.00 as at the date of the 10 Day Notice, November 25, 2018. I find that the 10 Day Notice was deemed served on the tenant on November 28, 2018. I find that the tenant did not dispute the notice nor did they make payment in full within the five days granted under section 46(4) of the *Act*. I accept the landlord's evidence that the current amount of rental arrear for this tenancy is \$1,650.00.

Conclusion

The decision and orders of December 19, 2018 are confirmed.

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 25, 2019

Residential Tenancy Branch