



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, OPR, MNR, FF

Introduction

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

- an order of possession for cause and unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord and his agent attended the hearing via conference call and provided undisputed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence by posting it to the rental unit door on March 7, 2019. I accept the undisputed testimony of the landlord and find that the tenant was properly served. Although the tenant did not attend, I find that the tenant is deemed served 3 days after posting on the notice package on March 10, 2019 as per section 90 of the Act.

Preliminary Issue(s)

At the outset the landlord's application for dispute was clarified in which a previous application for dispute was heard on February 19, 2019 for which a decision was given regarding an order of possession and a monetary order for unpaid rent. It was noted that the street address on the application for dispute was for 6759 and was incorrect as

per the 10 Day Notice dated December 18, 2018 for 6750. The landlord has now applied under the street address of 6750.

During the hearing the landlord cancelled the request for the order of possession based upon the notice to end tenancy issued for cause dated December 18, 2018. The merits of that notice were not addressed in this hearing.

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 money owed or compensation for damage or loss, unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided undisputed testimony that this tenancy originally began as a rental for storage space, but that the landlord later learned that the tenant had moved into the space and occupied it as his residence.

The landlord provided undisputed testimony that in a previous hearing in which both parties attended held on February 19, 2019, both parties had confirmed that a 10 Day Notice dated December 18, 2018 was served on December 18, 2018 by posting it to the rental unit door.

In the decision dated February 19, 2019 it states in part,

*The landlord issued a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") which the parties agreed the landlord posted to the tenant's door on December 18, 2018 thereby affecting service under section 90 on December 21, 2018, claiming unpaid rent of \$225.00 a month for September to December 2018, inclusive, for a total rent outstanding of \$900.00. **The parties agreed the tenant currently owes additional rent for the months of January and February 2019; total outstanding rent at the date of the hearing was \$1,350.00.***

The landlord submitted a copy of the Ten-Day Notice with an effective vacancy date of December 28, 2018 (corrected to December 31, 2018). The Notice required the tenant to pay the rent to the landlord or file an Application for Dispute Resolution within five days.

The landlord testified the tenant did not pay the rent owing or file an Application for Dispute resolution within five days. In his testimony, the tenant acknowledged this was correct.

The parties agreed the tenant has made no subsequent payments and continues to reside in the rental unit.

The landlord confirmed that unpaid rent/loss of rental income continues up to the date of this hearing. The landlord seeks an order of possession and a monetary order for unpaid rent of \$1,875.00 which consists of:

| | |
|------------|-----------------------------|
| \$225.00 | Unpaid Rent, September 2018 |
| \$225.00 | Unpaid Rent, October 2018 |
| \$225.00 | Unpaid Rent, November 2018 |
| \$225.00 | Unpaid Rent, December 2018 |
| \$225.00 | Unpaid Rent, January 2019 |
| \$225.00 | Unpaid Rent, February 2019 |
| \$225.00 | Unpaid Rent, March 2019 |
| \$225.00 | Unpaid Rent, April 2019 |
| \$1,800.00 | Total Unpaid Rent |

The landlord provided no further details of the monetary claim sought and as such, I find that the landlord has only justified a monetary claim of \$1,800.00 in unpaid rent instead of the amount as filed for \$1,875.00.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the undisputed evidence of the landlord that the tenant was served with the 10 Day Notice dated December 18, 2018 by posting it to the rental unit door. The landlord provided undisputed evidence that the tenant failed to pay rent as owed. The landlord also referred to the evidence in the previous hearing dated February 19, 2019 in which both parties agreed that rent was owed totalling, \$1,350.00 as of the date of that hearing. The landlord also stated the unpaid rent/loss of rental income continues as the tenant still occupies the rental space as of the date of this hearing. The landlord seeks recovery of the losses for two additional months at \$225.00 per month for a total of \$1,800.00. The landlord provided evidence in the previous hearing and direct testimony in this hearing confirming that no rent has been paid nor has the tenant made an application for dispute of the 10 Day Notice. As such, I find that the landlord is entitled to an order of possession to be effective 2 days after the tenant has been served.

I also find that the landlord has established a total monetary claim of \$1,800.00 in unpaid rent/loss of rental income. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee for this application.

Conclusion

The landlord is granted an order of possession.
The landlord is granted a monetary order for \$1,900.00

These orders must be served upon the tenant. Should the tenant fail to comply with the orders, the orders may be filed in the Supreme Court and the Small Claims Division of the Provincial Court and enforced as orders of those courts.

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: April 16, 2019

Residential Tenancy Branch