



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNRL-S OPR

Introduction

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

- an Order of Possession for non-payment of rent and for a breach of a material term of the tenancy pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled hearing time for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlord testified they served the tenant with the Notice of Hearing and Application for Dispute Resolution and their evidence by personal delivery on March 19, 2019 and by registered mail sent on March 22, 2019. The landlord provided the Canada Post tracking number in support of service referenced on the first page of the decision. Based on the undisputed testimony of the landlord, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution and their evidence pursuant to section 89 of the *Act*.

At the commencement of the hearing the landlord advised my that all unpaid rent in dispute in this matter had been payed by the tenant, on a use and occupancy basis, prior to the hearing. As such, the landlord withdrew its application for a monetary order for unpaid rent which I accordingly dismiss. However, the landlord still requested an order for possession and reimbursement of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to reimbursement of the filing fee?

Background and Evidence

The tenancy started on April 1, 2017 with a monthly rent of \$900.00. The tenant paid a \$450.00 security deposit. The rent increased to \$936.00 in May 2018.

The tenant and the landlord entered a parking agreement in July 2018 wherein the tenant agreed to pay \$40.00 per month for a parking space in the garage and \$25.00 per month for an above-ground parking space.

The landlord testified that the tenant issued multiple non-negotiable cheques. The landlord testified that they charged a \$25.00 non-sufficient funds fee for each such cheque.

The landlord served a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Ten-Day Notice") on the tenant on February 8, 2019. The Ten-Day Notice stated unpaid rent of \$78.00. The landlord's ledger for this tenancy states the amounts due in February 2019:

<u>Item</u>	<u>Amount</u>
NSF Fee	\$25.00
Parking (above ground)	\$13.00
Parking (below ground)	\$40.00
Rent	\$0.00
Total	\$78.00

However, the landlord testified that the ledger did not accurately apportion the tenant's rent payment. The landlord testified the \$78.00 allegedly owed by the tenant in February 2019 was actually \$75.00 for non-sufficient funds fees and \$3.00 for rent arrears.

The following is the rent payment history listed in the landlord's ledger for this tenancy.

Month	Rent Owed	Rent Paid	Balance
April 2017	\$900.00	-\$900.00	\$0.00
May 2017	\$900.00	-\$900.00	\$0.00
June 2017	\$900.00	-\$900.00	\$0.00
July 2017	\$900.00	-\$900.00	\$0.00
August 2017	\$900.00	-\$900.00	\$0.00
September 2017	\$900.00	-\$900.00	\$0.00
October 2017	\$900.00	-\$900.00	\$0.00
November 2017	\$900.00	-\$900.00	\$0.00
December 2017	\$900.00	-\$900.00	\$0.00
January 2018	\$900.00	-\$900.00	\$0.00
February 2018	\$900.00	-\$900.00	\$0.00
March 2018	\$900.00	-\$900.00	\$0.00
April 2018	\$900.00	-\$900.00	\$0.00
May 2018	\$936.00	-\$936.00	\$0.00
June 2018	\$936.00	-\$936.00	\$0.00
July 2018	\$936.00	-\$936.00	\$0.00
August 2018	\$936.00	-\$936.00	\$0.00
September 2018	\$936.00	-\$936.00	\$0.00
October 2018	\$936.00	-\$936.00	\$0.00
November 2018	\$936.00	-\$908.00	\$28.00
December 2018	\$936.00	-\$964.00	\$0.00
January 2019	\$936.00	-\$936.00	\$0.00
February 2019	\$936.00	-\$936.00	\$0.00

Analysis

Pursuant to Residential Tenancy Branch Rules of Procedure ("RTB Rules"), Rule 6.6 states that the applicant, in this case the landlord, has the onus of proof to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the landlord to prove that, more likely than not, the facts occurred as claimed in order to prevail in their claim.

Section 46 of the *Act* states that a landlord may end a tenancy if rent is unpaid after it is due by giving the tenant a ten day notice to end tenancy. In this matter, the landlord's Ten-Day Notice stated unpaid rent of \$78.00. The Ten-Day Notice was served on the

tenant by posting the notice on the tenant's door on February 8, 2019. Pursuant to section 90 of the Act, the Ten-Day Notice is deemed to have been served three days later, being February 11, 2019. Accordingly, the tenants had five days after the date of service of February 11, 2019, to pay the unpaid rent to dispute the notice, that being February 16, 2019. I find that that the tenant did not pay the \$78.00 prior to the expiration of this deadline.

However, the evidence submitted by the landlord did not establish that the tenant owes the sum of \$78.00 in unpaid rent as of the date the Ten-Day Notice was issued. The landlord's ledger states that there was no rent arrears for February 2019. Rather, the ledger states the \$78.00 is only for non-sufficient funds fees and outstanding parking fees. These are not unpaid rents within the meaning of section 46 of the Act.

The landlord argued that these amounts were not properly attributed on the ledger and the tenant actually owed \$75.00 for non-sufficient funds fees and \$3.00 for late rent as of February 2019. However, by reviewing the entire rent payment history from the start of the tenancy in April 2017 to the date the Ten-Day Notice was issued on February 8, 2019, the ledger indicates that there was no unpaid rent owing as of February 8, 2019. Since I find that there was no rent outstanding as of February 8, 2019, I find that the Ten-Day Notice is not a valid notice to end tenancy and I dismiss the landlord's request for an order for possession. This tenancy shall continue until it ends pursuant to the Act.

Since the landlord has not prevailed in this matter, I dismiss the landlord's application for reimbursement of the filing fee pursuant to section 72 of the Act.

Conclusion

The landlord's request for a monetary order for unpaid rent is dismissed.

I dismiss the landlord's request for an order for possession. This tenancy shall continue until it ends pursuant to the Act.

I dismiss the landlord's application for reimbursement of the filing fee pursuant to section 72 of the Act.

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: May 09, 2019