



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNRL-S OPR

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$2,700.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the notice of dispute resolution form and supporting evidence package via registered mail on April 4, 2019. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on April 9, 2019, five days after the tenant mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- to retain all of the tenant's security deposit in partial satisfaction of the monetary order requested;
- an Order of Possession for non-payment of rent;
- a monetary order for unpaid rent in the amount of \$2,700.00; and
- recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of his claim and my findings are set out below.

The parties entered into a written month-to-month tenancy agreement starting July 1, 2018. Monthly rent is \$900.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$450.00. The landlord still retains this deposit.

The landlord testified that the tenant had not paid monthly rent for three months, totaling \$2,700.00.

On March 22, 2019, the landlord served the tenant by registered mail with a form RTO-3 Notice to End Tenancy, with an effective move-out date of March 28, 2019. The landlord entered copies of the first two pages of this notice into evidence.

Analysis

Form RTO-3 Notice to End Tenancy is not a form currently used by the Residential Tenancy Branch. The form itself dates back to 2004. It does not have an analogue within current RTB Forms. Section 52 of the Act states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must
[...]
(e)when given by a landlord, be in the approved form.

As such, the Form RTO-3 Notice to End Tenancy is not effective.

Accordingly, I must dismiss the landlord's application, without leave to reapply. I decline to order that the tenant repay the landlord's filing fee.

Conclusion

I dismiss the landlord's application, without leave to reapply.

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 9, 2019

Residential Tenancy Branch