



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on May 23, 2019, wherein the Landlord sought an Order of Possession and monetary compensation from the Tenant based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on May 10, 2019 (the "Notice"), authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing was scheduled for 11:00 a.m. on July 5, 2019. Only the Landlord T.S., and the Landlord's Property Manager, K.G., called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:25 a.m. Additionally, 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's representatives and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that he served the Tenant with the Notice of Hearing and the Application, as well as the Amendment, on May 24, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of May 29, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation from the Tenant?"
3. What should happen with the Tenant's security deposit?
4. Should the Landlord recover the filing fee?

Background and Evidence

K.G. testified as to the terms of the tenancy as follows. K.G. confirmed that she and the Landlord took over management of the property approximately six months prior to the hearing. She stated that to her knowledge the tenancy began December 2017. She further stated that to her knowledge the Tenant did not pay a security deposit.

K.G. stated that at the time the Notice was issued rent was \$700.00 per month. The Tenant failed to pay rent for March, April and May 2019 following which the Landlord issued the Notice. K.G. testified that the Notice was served by posting to the rental unit door on May 10, 2019.

K.G. testified that the Tenant did not pay the outstanding rent or make an application for dispute resolution within the required five days.

K.G. further testified that the Tenant failed to pay rent for June or July 2019, such that the sum of \$3,500.00 was outstanding at the time of the hearing.

Analysis

After consideration of the Landlord's undisputed testimony and evidence and on a balance of probabilities I find as follows.

I find that the Tenant was served with the Notice on May 10, 2019 by posting to the rental unit door. Section 90 of the *Residential Tenancy Act* provides that documents served in this manner are deemed served three days later; accordingly I find that the Tenant was served with the Notice as of May 13, 2019.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, May 18, 2019. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

I find that the Tenant has not paid the outstanding rent and did not apply to dispute the Notice as required by section 46(4) of the *Act*, and is therefore conclusively presumed, pursuant to section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent.

I find that the Landlord is entitled, pursuant to section 55 of the *Act*, to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I also find that the Landlord has established a total monetary claim of \$3,600.00 comprised of unpaid rent for March, April, May, June and July 2019 as well as the

\$100.00 fee paid by the Landlord for this application. In furtherance of this, I grant the Landlord a Monetary Order under section 67 of the *Act* for the balance due of **\$3,600.00**. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

I accept K.G.'s testimony that the Tenant did not pay a security deposit. Should she be incorrect, the Landlord is at liberty to reapply for authority to retain those funds. Similarly, should the Landlord suffer additional monetary losses as a result of this tenancy, they are at liberty to reapply for related compensation.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and is granted a Monetary Order for unpaid rent and recovery of the filing fee.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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: July 05, 2019

Residential Tenancy Branch