



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR-S, FF

Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- 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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord and his agent (the landlord) 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 via Canada Post Registered Mail on May 24, 2019 and has submitted a copy of the Canada Post Receipt and the Customer Receipt Tracking Number as confirmation. I accept the undisputed evidence of the landlord and find that the tenant was sufficiently served with the notice of hearing package and the submitted documentary evidence as per section 90 of the Act.

At the outset, the landlord stated that he is no longer seeking a monetary claim as the tenant has "paid up his arrears". As such, this portion of the landlord's claims is cancelled.

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 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.

This tenancy began on June 15, 2018 on a fixed term tenancy ending on June 30, 2019 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated June 2, 2018. The monthly rent is \$1,400.00 payable on the 1st day of each month. A security deposit of \$700.00 was paid on June 2, 2018.

The landlord stated that the tenant was served with a 10 Day Notice for Unpaid Rent (the 10 Day Notice) dated May 4, 2019 by posting it to the rental unit door on May 4, 2019. The 10 Day Notice states that the tenant failed to pay rent of \$1,400.00 that was due on May 1, 2019 and provides for an effective end of tenancy date of May 14, 2019.

The landlord clarified that May 2019 rent of \$1,400.00 was paid on June 7, 2019 via money order. The landlord stated that the money was accepted, but the tenant was verbally notified that it was being accepted "For Use and Occupancy Only" and that the landlord would still seek an end to the tenancy. The landlord stated that the accepted portion of the money order and the receipt portion given back to the tenant were both stamped with "For Use and Occupancy Only" as well. The landlord stated that although arrears were no longer an issue, the landlord wished to proceed with ending the tenancy.

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, the landlord has provided undisputed testimony that the tenant was served with a 10 Day Notice dated May 4, 2019 by posting it to the rental unit door on May 4, 2019 as May 2019 rent of \$1,400.00 was unpaid. The landlord accepted late payment of rent on June 7, 2019 of May 2019 rent and that subsequently all rental arrears were paid. I accept the undisputed evidence of the landlord and find that the tenant did fail to pay rent when due and that the landlord did not reinstate the tenancy when rent was received on June 7, 2019 due to the landlord's verbal notice and the landlord's actions in notifying the tenant via stamping the tenant's receipt and the money order with "use

and occupancy only". The landlord's request for an order of possession is granted and will be effective 2 days after upon the tenant being served as the effective end of tenancy date has now passed.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.
The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, these 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: July 08, 2019

Residential Tenancy Branch