



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent;
2. To have the landlord make repairs to the rent unit; and
3. To recover the cost of filing the application.

Tenant's application

This matter was set for hearing by telephone conference call at 11:00 A.M on July 12, 2019. The line remained open while the phone system was monitored for 21 minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 11:21 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenant's application without leave to reapply.

Landlord's application

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served in person on June 3, 2019, and was witnessed.

I find that the tenant has been duly served in accordance with the Act.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

Based on the testimony of the landlord, I find that the tenant was served with a notice to end tenancy for non-payment of rent on May 10, 2019, by personal service. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The landlord testified that the tenant was in rent arrears of \$3,900.00 when the notice to end tenancy was issued. The landlord stated the tenant did not pay any subsequent rent for June (\$2,000.00) and July 2019 (\$2,000.00). The landlord seeks to recover unpaid rent in the amount of \$7,900.00

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenant made an application to cancel the notice to end tenancy. However, it was filed on June 7, 2019, and not made within five days. Further, from the

tenant's written submission it appears the tenant did not pay rent as they alleged the landlord did not make repairs.

I find the tenant has not paid the outstanding rent and did not apply to dispute the notice within the statutory time limited, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on May 20, 2019 and the tenant is now overholding the premises. The tenant cannot withhold rent simply because they feel entitled to do so.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I accept the undisputed evidence of the landlord that the tenant did not pay the amount of arrears shown in the notice to end tenancy and did not pay subsequent rent. I find the landlord is entitled to recover unpaid rent in the amount of **\$7,900.00**.

I find that the landlord has established a total monetary claim of **\$8,000.00** comprised of unpaid rent and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$7,000.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant failed to pay rent.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 15, 2019