



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STEWART HOUSE SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNRL-S OPR

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities, an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord's agent testified that the tenant was served with the Application for Dispute Resolution and notice of this hearing (the Hearing Package) by registered mail on May 9, 2019 and has provided a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt addressed to the tenant. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on November 1, 2006 and the tenant still resides in the rental unit. Rent is subsidized and the tenant's

share is \$465.00 per month payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 18 townhouse units, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenant failed to pay rent when it was due in April, 2019, and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) on April 18, 2019 by posting it to the door of the rental unit. A copy has been provided as evidence for this hearing and it is dated April 17, 2019 and contains an effective date of vacancy of May 1, 2019 for unpaid rent in the amount of \$927.00 that was due on April 1, 2019.

On May 7, 2019 the tenant paid \$500.00 toward the arrears, for which the landlord issued a receipt indicating that the money was received for use and occupancy only and did not serve to reinstate the tenancy. The tenant paid an additional \$900.00 on May 24, 2019, for which the landlord gave another receipt indicating that the money was received for use and occupancy only. That caused a credit balance for rent to the end of May, 2019, however no rent has been paid for June, 2019 and the tenant is still in arrears the sum of \$457.00.

The tenant has not paid any rent since May 24, 2019 and has not served the landlord with an Application for Dispute Resolution disputing the Notice. The landlord seeks an Order of Possession, recovery of the \$100.00 filing fee, monetary compensation of the \$457.00 rent owed for June, 2019, and an order permitting the landlord to keep the security deposit.

Analysis

The *Residential Tenancy Act* specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the Notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant pays the rent in full within that 5 day period, the Notice is of no effect. However, if the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, I accept the undisputed testimony of the landlord's agent that the Notice was served by posting it to the door of the rental unit on April 18, 2019, which is deemed to have been served 3 days later, or April 21, 2019. I also accept the

undisputed testimony of the landlord's agent that the tenant paid a portion of the rent on May 7, 2019, which is beyond 5 days after service of the Notice. The landlord's agent also testified that the landlord has not been served with an Application for Dispute Resolution, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

I am also satisfied that the landlord is owed \$457.00 for rent for the month of June, 2019, and since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$500.00 security deposit and interest totalling \$15.55 calculated to today in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of \$41.45 ($\$457.00 + \$100.00 - \$515.55 = \41.45).

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further order that the landlord keep the \$515.55 security deposit and interest in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$41.45.

This order is final and binding and may be enforced.

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: June 20, 2019

Residential Tenancy Branch