



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 520 8TH STREET HOLDINGS LTD C/O
MARTELL and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

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 sections 46 and 55; and
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:15 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's property manager and property administrator attended the hearing and were 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's property manager and property administrator and I were the only ones who had called into this teleconference.

The property manager testified that the tenant was served with the landlord's application for dispute resolution on June 28, 2019 via registered mail. The landlord entered into evidence the tracking details from Canada Post which state that the landlord's application for dispute resolution was delivered to the tenant on July 4, 2019. I find that service was effected on the tenant on July 4, 2019, in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord's representatives, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The property manager provided the following undisputed testimony. This tenancy began on November 1, 2011 and is currently ongoing. Monthly rent in the amount of \$750.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant to the landlord. The ownership and management of the subject rental property both recently changed and the landlord was unable to locate a tenancy agreement.

The property manager testified that on May 25, 2019 she posted a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of June 6, 2019 (the "10 Day Notice") on the tenant's door. The property manager entered a witnessed proof of service document into evidence stating same. The 10 Day Notice states the tenant failed to pay rent in the amount of \$775.00 that was due on May 1, 2019.

The property manager testified that \$25.00 of that amount was an NSF charge for April 2019's rent cheque which bounced.

The property manager testified that the tenant has recently paid all rental arrears and the landlord is no longer seeking an Order of Possession or a Monetary Order for unpaid rent but is seeking to recover the \$100.00 filing fee.

The property manager testified that the tenant paid the rent stated as outstanding on the 10 Day Notice, but not the NSF fee, on April 1, 2019.

Analysis

Section 7(1)(d) of the *Residential Tenancy Regulation* (the “*Regulation*”) states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I find that the landlord has not proved, on a balance of probabilities, that a tenancy agreement exists and that it allows the landlord to charge a fee for a bounced cheque. Pursuant to section 68 of the *Act*, I amend the 10 Day Notice to state that the tenant failed to pay rent in the amount of \$750.00 that was due on May 1, 2019.

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) states that if within five days after receiving a notice under this section, the tenant pays the overdue rent, the notice has no effect

I find that the property manager served the 10 Day Notice on the tenant pursuant to section 88 of the *Act*. Pursuant to section 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on May 28, 2019, three days after its posting. Since the tenant paid the outstanding rent on June 1, 2019, within five days of receipt of the 10 Day Notice, the 10 Day Notice is cancelled and of no force or effect.

The property manager testified that the tenant has paid all outstanding rent, I therefor dismiss the landlord's application for a Monetary Order for unpaid rent.

Since I have found that the landlord would not have been successful in either of its claims, I decline to award the landlord the cost of the filing fee, pursuant to section 72 of the *Act*.

Conclusion

The landlord's application is dismissed 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: August 16, 2019

Residential Tenancy Branch