



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNRL OPR

Introduction

This hearing was scheduled to convene at 11:00 a.m. this date by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. 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 testified that the tenant was served with notice of this hearing (the Hearing Package) by registered mail on July 15, 2019 and has provided copies of the Canada Post tracking print-out and Registered Domestic Customer Receipt for this hearing. The package was returned to the landlord unclaimed by the tenant. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this tenancy began as a fixed term on August 1, 2016 until July 31, 2016 and then reverted to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$1,050.00 per month was originally payable under the

tenancy agreement, a copy of which has been provided for this hearing, on the first day of each month. Rent was raised to \$1,090.00 effective January 1, 2018 and again to \$1,120.00 effective January 1, 2019. Copies of the Notices of Rent Increase have also been provided for this hearing. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$525.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a condominium apartment.

The landlord further testified that rent has been paid sporadically, and the landlord has provided copies of numerous emails and calculations, but in one document refers to a \$600.00 payment that was erroneously not included in the calculations.

On June 19, 2019 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. It is dated June 18, 2019 and contains an effective date of vacancy of June 30, 2019 for unpaid rent in the amount of \$2,360.00 that was due on June 1, 2019. The tenant paid \$2,500.00 on August 6, 2019, but arrears had accumulated and the full amount has never been paid. The tenant has not served the landlord with an Application for Dispute Resolution disputing the notice to end the tenancy, and the landlord seeks an Order of Possession, a monetary order and recovery of the \$100.00 filing fee.

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, in which case the Notice is of no effect, or to dispute the Notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the tenant did not pay the rent in full within 5 days, and the landlord testified that the tenant has not served the landlord 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. I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*, and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

With respect to the monetary claim, I have reviewed the evidentiary material and compared the emails exchanged between the parties to the handwritten calculations of the landlord, to ensure there are no other discrepancies. I accept that the landlord missed a \$600.00

payment in the calculations but included that payment in the email sent to the tenant dated May 6, 2019. That email states that the tenant owed \$1,940.00, which I find is consistent with the previous emails to the tenant considering the amounts due and amounts paid. The handwritten calculations also state that the tenant paid \$1,300.00 on May 30, 2019, which would reduce the arrears to \$640.00. June's rent of \$1,120.00 increases the arrears to \$1,760.00, however the landlord's application states that the amount due as at June 1, 2019 was \$2,360.00 which is consistent with missing the \$600.00 May 6, 2019 payment in the calculations. The landlord's application seeks \$4,600.00 up to August, 2019, and by adding September rent of \$1,120.00, the difference again is \$600.00. The landlord testified that no payments have been made since, and I am satisfied that the landlord has established a claim of \$5,120.00 (\$1,760.00 + \$1,120.00 July + \$1,120.00 August + \$1,120.00 September).

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I leave it to the parties to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

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 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 \$5,220.00.

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: September 05, 2019

Residential Tenancy Branch