



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF

Preliminary matter

The original hearing for this matter was heard on July 25, 2019 as a Direct Request application, which is an Ex Parte application conducted by written submissions only. The requirement for a Direct Request application is that all documentation is complete and accurate. In this case the tenancy agreement was not signed therefore the application was scheduled for a participatory hearing on today's date.

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on July 26, 2019. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is the Landlord entitled to keep part of the Tenant's security deposit?

Background and Evidence

This tenancy started on July 15, 2018 as a verbal month to month tenancy. Rent is \$500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$250.00 at the start of the tenancy.

The Landlord said that the Tenant did not pay \$1,000.00 of rent for June and July 2019 when it was due and as a result, on July 2, 2019 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated July 2, 2019 to the Tenant on July 2, 2019. The Landlord said the Tenant has unpaid rent for August and September, 2019 in the amount of \$1,000.00 as well. The Landlord said the Tenant has a total of \$2,000.00 of unpaid rent.

The Landlord further indicated that the Tenant's belongings are in the rental unit and she may be living at the rental unit. The Landlord requested an Order of Possession for as soon as possible.

The Landlord also sought to recover the \$100.00 filing fee for this proceeding.

The Tenant agreed that there is unpaid rent of \$2,000.00 but she indicated there are a number of circumstances that have caused the situation that resulted in her not paying the rent. The Tenant said she understands that if she does not pay the rent the tenancy will end. Further the Tenant said that she thought that because the rental was only for a room it was not included in the Residential Tenancy Act.

Analysis

The Residential Tenancy Act does have jurisdiction on room rentals as long as the owner of the property does not live in the rental complex and share the kitchen and bathroom. As well tenancies without a written tenancy agreement or agreements that are not signed are considered to be verbal tenancy and are treated the same as written tenancies.

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the days it is personally delivered, or on July 2, 2019. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than July 7, 2019

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep \$100.00 of the Tenant's security deposit as payment of the filing fee.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court

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 23, 2019

Residential Tenancy Branch