



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNRL-S OPR

Introduction

This review hearing was scheduled based on the Tenant's application for Review Consideration made on July 12, 2019 of a decision and orders made July 8, 2019. A Review Consideration decision dated July 24, 2019 granted a review hearing of the Landlord's application.

In the original application the landlord applied pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

In the original decision of July 8, 2019 the landlord was granted an order of possession and monetary order against the tenant.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they have not served the landlord with the Notice of Review Hearing or any materials. The landlord confirmed they had not been served by the tenant and became aware of the review hearing through the Branch. Based on the testimonies I find that the landlord has not been served by the tenant with the Notice of Review Hearing in accordance with the Act or at all.

Issue(s) to be Decided

Should the original decision be affirmed, set aside and replaced or varied?

Background and Evidence

The parties agreed on the following facts. The monthly rent for this periodic tenancy is \$1,400.00 due on the first day of each month. The tenant failed to pay the rent in full that was due on May 1, 2019 and the landlord issued a 10 Day Notice for Unpaid Rent dated May 4, 2019. The tenant did not pay the full amount of rent within 5 days of receiving the 10 Day Notice nor did they file an application to dispute the notice.

The tenant subsequently made a payment of \$1,400.00 on June 7, 2019. The landlord accepted the payment but indicated that it did not reinstate the tenancy and was accepted for "Use and Occupancy Only". The tenant made subsequent payments for monthly rent and the tenant testified that all payments were indicated, both verbally and in writing, that they were for "Use and Occupancy Only".

Analysis

In the Review Consideration Decision the arbitrator writes that:

Notices of the time and date of the hearing are included with this Review Consideration Decision for the Tenant to serve to the Landlord within 3 days of receipt of this Decision. The Tenant must also serve a copy of this Decision to the Landlord.

The tenant testified that they had not served the landlord with the Notice of Review Hearing as required.

I find that the tenant has not served the landlord with the Notice of Review Hearing in a manner consistent with paragraph 89(1) of the Act, or at all. As such I dismiss the tenant's application for review.

Furthermore, the tenant gave evidence that they had not disputed the initial 10 Day Notice of May 4, 2019, did not make any payment within 5 days of service and that all subsequent payments towards rent have been clearly identified by the landlord as being

accepted for use and occupancy only and did not reinstate the tenancy. I find that there is ample evidentiary basis in support of the landlord's original application for an order of possession and position that this tenancy has not been reinstated.

The tenant provided lengthy, rambling testimony attributing their failure to pay rent in a timely manner to errors with the bank and various outside circumstances. I find that the tenant's evidence to be irrelevant to the matter at hand.

Conclusion

The decision and order of June 8, 2019 are confirmed.

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 24, 2019

Residential Tenancy Branch