



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON MAX REALTY & PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent and the filing fee.

The landlord had initially made application by direct request which is processed by a non-participatory hearing. In an interim decision dated September 09, 2019, the adjudicator adjourned the hearing to a participatory hearing. The reason for the adjournment was that the tenancy agreement did not indicate the day of the month that rent was payable. The parties were required to attend in person to provide this information.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants represented themselves and the landlord was represented by their agents.

As both parties were in attendance, I confirmed service of documents. The tenant stated that he did not receive the landlord's evidence and confirmed that he did not file any of his own. The landlord stated that he served his evidence to the tenant by registered mail on September 05, 2019 and filed a copy of the tracking slip. I find that the tenant was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to an order of possession and a monetary order for unpaid rent, and the filing fee?

Background and Evidence

The tenancy started on March 01, 2019. A copy of the tenancy agreement was filed into evidence. The monthly rent is \$800.00. The tenant confirmed that rent is due on the first of each month.

On August 16, 2019, the landlord served the tenant with a ten day notice to end tenancy, by registered mail for \$600.00 in unpaid rent. The landlord filed a copy of the tracking slip. The tenant did not dispute the notice.

The landlord further testified that the tenant failed to pay full rent for September and did not pay any rent for October and November. The landlord testified that at the time of the hearing the tenant owes rent in the amount of \$100.00 for June, \$500.00 for August, \$500.00 for September, \$800.00 for October and \$800.00 for November 2019 for a total of \$2,700.00 in unpaid rent.

The tenant stated that he paid rent in cash and does not owe the landlord any rent. The tenant stated that the landlord did not provide receipts. The landlord filed a copy of a receipt dated September 29, 2019 for \$300.00. The receipt has a note that states "*remaining \$1,900 pay by Oct 23 promised*". The receipt is signed by the tenant. The signature is very similar to that of the tenant on the tenancy agreement.

The landlord is applying for an order of possession effective by 1:00 pm on December 01, 2019 and a monetary order in the amount of \$ 2,700.00 for unpaid rent plus \$100.00 for the recovery of the filing fee.

Analysis

Based on the sworn testimony of the landlord and the documents filed into evidence, I accept the landlord's evidence in respect of the claim. The tenant is deemed to have received the notice to end tenancy for unpaid rent, on August 21, 2019 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective by 1:00 pm on December 01, 2019. The Order may be filed in the Supreme Court for enforcement.

Even though the tenant denied owing rent to the landlord, based on the receipt filed into evidence, I find on a balance of probabilities that it is more likely than not that the tenant did not pay full rent for the months of June, August and September 2019 and did not pay any rent for the months of October and November 2019. I find that the landlord is entitled to his monetary claim of \$2,700.00 for unpaid rent. Since the landlord has proven his case, he is also entitled to the recovery of the filing fee of \$100.00 for a total claim of \$2,800.00.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount due of \$2,800.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective by **1:00 pm on December 01, 2019** and a monetary order in the amount of **\$2,800.00**.

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: November 04, 2019

Residential Tenancy Branch