



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASITA INDUSTRIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNDCL-S MNRL-S OPR**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- An Order of Possession for unpaid Rent pursuant to sections 46 and 55.

Both the tenant and the landlord attended the hearing. The landlord was represented by property manager, JJ ("landlord"). As both parties were in attendance, service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Is the landlord entitled to:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- An Order of Possession for unpaid Rent pursuant to sections 46 and 55.

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The month to month tenancy began on November 1, 2017 with rent set at \$775.00 per month payable on the first day of each month. A security deposit of \$375.00 was collected by the landlord at the commencement and the landlord continues to hold it.

The parties agree the tenant began to have difficulties in paying the rent commencing in June 2019. Partial payment for June was made, leaving \$300.00 in arrears. Rent has not been paid since then.

On September 7, 2019 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice"). The effective date on the Notice is September 20th, and the arrears as of September 1st were stated to be \$1,845.00. The landlord testified there was an error on the Notice and the actual amount of arrears as of September 1st was \$1,850.00. The parties agree the tenant received the Notice on September 7th and that the Notice contained two pages even though the landlord only supplied the first page for this hearing.

The tenant testified he does not dispute he owes the rent but he has been out of work for some time. He is now working and can pay back the arrears if the landlord would retain him as a tenant. He acknowledges he did not file an application to dispute the Notice as he did not know what his options were.

Analysis

As the parties agree the tenant was served with the Notice on September 7th, I find the tenant was served with it on that day pursuant to sections 88 and 90 of the *Act*.

Section 46 of the *Act* states:

Within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates by that date.

The tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice, in this case by September 12th. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days has led to the end of the tenancy on the effective date of the Notice. In accordance with section 53 of the *Act*, the effective date of September 20th is corrected to 10 days after the tenant received the Notice, or September 17th. As the corrected effective date has passed, the landlord is entitled to an Order of Possession effective 2 days after service upon the tenant.

During the hearing, the tenant did not dispute the arrears in rent or that he failed to pay any rent since receiving the Notice. Section 26 of the *Act* is clear, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right

under this *Act* to deduct all or a portion of the rent. I find the landlord is entitled to compensation for June's arrears as well as rent for each of months of July, August, September and October.

Residential Tenancy Policy Guideline #3 states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises. Since the tenant remained in the rental unit from November 1st until the date of the hearing on November 4th, I find that the landlord is also entitled to overholding rent in the amount of **\$103.33**, four days at the per diem rate of \$25.83 per day.

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of **\$375.00**. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
Remainder of June Rent	\$300.00
July rent	\$775.00
August rent	\$775.00
September rent	\$775.00
October rent	\$775.00
November rent	\$103.33
Filing fee	\$100.00
Less security deposit	(\$375.00)
Total	\$3,228.33

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of **\$3,228.33**.

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