



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 hearing convened as a result of a Landlord's Application for Dispute Resolution in which the Landlord sought an Order of Possession and monetary compensation from the Tenant pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 1, 2019 (the "Notice"), authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 9:30 a.m. on November 8, 2019. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 9:48 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and his brother and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that he served the Tenant with the Notice of Hearing and the Application on October 10, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Landlord confirmed that according to the Canada Post tracking information provided the package was received on October 11, 2019.

I accept the Landlord's testimony and find the Tenant was duly served as of October 11, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord confirmed his email addresses during the hearing as well as his understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession and monetary compensation based on the Notice?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of a tenancy agreement confirming that this tenancy began June 1, 2014. The Landlord testified that monthly rent was originally \$1,350.00 and was raised to \$1,456.00 and again to \$1,500.00. The Landlord confirmed the Tenant has been paying \$1,500.00 since May 2019. The Landlord also stated that the Tenant paid a security deposit of \$675.00.

The Tenant failed to pay the October rent following which the Landlord issued the Notice. The Landlord testified that he personally served the Notice on the Tenant on October 3, 2019. The Notice informed the Tenant that the Tenant had five days in which to pay the rent or apply to dispute the Notice; the Landlord confirmed that the Tenant did neither.

The Landlord also testified that the Tenant also failed to pay the November 2019 rent such that \$3,000.00 remains outstanding for rent.

Analysis

Based on the Landlord's undisputed testimony and evidence before me, and on a balance of probabilities, I find as follows.

The Landlord issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

Landlord's notice: non-payment of rent

46 (1)A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect, or

(b)dispute the notice by making an application for dispute resolution.

(5)If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit to which the notice relates by that date.

(6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Section 26 of the *Residential Tenancy Act* provides that a tenant must pay rent when rent is due. I find that the Tenant failed to pay rent as required by the tenancy agreement and section 26.

I accept the Landlord's testimony that he served the Notice on the Tenant on October 3, 2019.

I also find that the Tenant did not pay the outstanding rent and did not apply to dispute the Notice within the five days required by section 46(4); accordingly, the Tenant is conclusively

presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord has established a total monetary claim of \$3,100.00 comprised of unpaid rent for October and November 2019 and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$675.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of \$2,425.00. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a Monetary Order for the balance due.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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 08, 2019

Residential Tenancy Branch