



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNSD, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for an order of possession and for a monetary order for unpaid rent and for the recovery of the filing fee. The landlord also applied to retain the security and pet deposits in partial satisfaction of his claim.

The tenant applied to cancel the notice to end tenancy for non-payment of rent and for the recovery of the filing fee

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 landlord represented himself and was accompanied by his agent. The tenant represented herself.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of the other's application for dispute resolution and evidence. I find that evidence was served to both parties in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent and the filing fee? Is the landlord entitled to retain the security and pet deposits?

Background and Evidence

The background facts are generally undisputed. The tenancy started on January 10, 2019 and the current monthly rent is \$1,775.00 payable on the first of the month. Prior to moving in the tenant paid a total of \$1,775.00 in security and pet deposits.

The landlord stated that as of the date of this hearing the tenant owed rent in the amount of \$5,750.00. The tenant agreed that she was behind in rent and did not dispute the amount owed. On September 16, 2019, the landlord served the tenant with a notice to end tenancy for \$1,775.00 in unpaid rent. The tenant disputed the notice in a timely manner and continued to occupy the rental unit without paying rent. The tenant agreed that she owed rent in the total amount of \$5,750.00.

The landlord has applied for an order of possession to be effective by 1:00pm on December 01, 2019 and for a monetary order in the amount of \$5,750.00 for unpaid rent plus \$100.00 for the filing fee. The tenant agreed to allow the landlord to retain the deposits and reduce the amount owed to the landlord, by the tenant to \$4,075.00.

Analysis

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, 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, by that date.

Based on the sworn testimony and documentary evidence of both parties, I find that the tenant is deemed to have received the notice to end tenancy for unpaid rent, on September 19, 2019 and did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired. The tenant agreed that she owed a total of \$4,075.00 for unpaid rent plus the filing fee after the landlord retained the deposits. The tenant also agreed to move out by December 01, 2019.

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 1:00pm on December 01, 2019. The order may be filed in the Supreme Court for enforcement.

Over all the landlord has established a total claim of \$4,075.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. 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 1:00pm on December 01, 2019.

The landlord may retain the security and pet deposits in the total amount of \$1,775.00 and I grant the landlord a monetary order in the amount of \$4,075.00.

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 26, 2019

Residential Tenancy Branch