



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VETERAN'S MEMORIAL MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNRL-S, OPR

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on November 1, 2019, in which the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent issued on October 2, 2019 (the "Notice") authority to retain the Tenants' security deposit and recovery of the filing fee.

The hearing of the Landlord's Application was set for 11:00 a.m. on December 3, 2019. Only the Landlord's representatives called into the hearing. They gave affirmed testimony and were provided the opportunity to present their 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 11:21 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 Landlords 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's Agent, M.A., testified that the Tenant informed the Landlord that he has been in a drug rehabilitation facility since some time in the fall of 2019. M.A. stated that they served the Tenant with the Notice of Hearing and the Application on November 12, 2019 by registered mail to the drug rehabilitation facility. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Landlord also provided confirmation that the package was signed for on November 13, 2019.

I accept the Landlord's evidence as to service and find that the Tenant was duly served as of November 13, 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's Agent confirmed their email address during the hearing as well as their understanding that this Decision would be emailed to them.

The Landlord was incorrectly named on the Application. Pursuant to section 64(3)(c) I amend the Application to correctly name the Landlord.

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. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord's agent testified that the tenancy began April 15, 2019. Monthly rent is \$570.00 a month. The Tenant paid a security deposit of \$285.00.

The Tenant failed to pay the October rent following which the Landlord issued the Notice. The Notice was served on the Tenant by posting to the rental unit door on October 2, 2019. The Landlord's agent stated that at that time the Tenant was in and out of the rental unit such that he believed the Tenant would have seen the Notice.

The Agent confirmed the Tenant did not pay the outstanding rent and did not make an application for dispute resolution.

The Agent also confirmed the Tenant failed to pay rent for November and December 2019 such that the sum of \$1,710.00 remains outstanding.

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.

I find that the Tenant failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*.

I accept the Landlord's agent's testimony that he served the Notice on the Tenant on October 2, 2019 by posting to the rental unit door. While the Tenant is currently in a residential treatment facility, I accept the Landlord's agent's testimony that at the time the Notice was served the Tenant was either residing primarily in the rental unit or attending the rental unit regularly such that he would have seen the Notice posted to his door.

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) and is therefore 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 also find that the Landlord has established a total monetary claim of \$1,810.00 comprised of unpaid rent for October, November and December 2019 (\$570.00 x 3 = \$1,710.00) and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the Tenant's security deposit of \$285.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$1,525.00**. 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: December 4, 2019

Residential Tenancy Branch