



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

On October 31, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession; for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference hearing. The Landlord was assisted by an agent. The Landlord provided affirmed testimony that the Tenant was served the Notice of Dispute Resolution Proceeding by registered mail sent to the Tenant on November 17, 2019. The Landlord testified that the registered mail was addressed to the Tenant at the dispute address. The Landlord provided the registered mail tracking information as proof of service.

The Tenant testified that she did not receive the Notice of Dispute Resolution. The tenant testified that she received the Canada post notification card in the mailbox; however, when she went to retrieve the mail it had been returned to sender.

I find that the Tenant is deemed served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the *Act*. The Act provides that documents served by registered mail are deemed served on the fifth day after they are mailed.

The Landlord and Tenant were provided the opportunity to make submissions at the hearing.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on July 1, 2019, on a month to month basis. Rent in the amount of \$1,200.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$600.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant did not pay all the rent owing under the tenancy agreement for the month of September 2019. The Landlord testified that the Tenant owes \$600.00 for September rent.

The Landlord testified that the Tenant has not paid any rent owing for the month of October 2019.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 16, 2019, ("the 10 Day Notice"). The Landlord testified that the Tenant was served with the Notice by posting it on the Tenant's door on October 17, 2019.

The Landlord provided a copy of the 10 Day Notice. The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$1,800.00 which was due on October 1, 2019. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant testified that she received the 10 Day Notice and did not dispute the Notice within five days of receiving it.

The Landlord testified that the Tenant owes rent for the following months:

- September 2019, in the amount of \$600.00
- October 2019, in the amount of \$1,200.00
- November 2019, in the amount of \$1,200.00
- December 2019 in the amount of \$1,200.00

The Landlord testified that the Tenant made a payment of \$1,200.00 to the Landlord on December 9, 2019. The Landlord applied the \$1200.00 payment towards December 2019 rent for use and occupancy only.

The Tenant confirmed that she paid the Landlord \$1,200.00.

The Landlord seeks an order of possession for the rental unit effective January 31, 2020, and a monetary order for unpaid rent in the amount of \$3,000.00.

The Landlord is seeking to keep the security deposit of \$600.00 in partial satisfaction of the claim for unpaid rent.

Analysis

Based on the evidence before me, the testimony of the Landlord, and Tenant and on a balance of probabilities, I find that the Tenant did not pay all the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice, and did not apply to dispute the Notice, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ends on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act. The Landlord is entitled to an order of possession effective two days after service on the Tenant; however, the Landlord requested a possession date for January 31, 2020. I grant the Landlord an order of possession for the rental unit effective January 31, 2020. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant owes the Landlord \$3,000.00 for unpaid rent.

I order that the Landlord can keep the security deposit in the amount of \$600.00 in partial satisfaction of the claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$3,100.00 comprised of \$3,000.00 in unpaid rent for the above-mentioned dates and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$600.00 towards the claim of \$3,100.00, I find that the Landlord is entitled to a monetary order in the amount of \$2,500.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement and did not file to dispute the 10 Day Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

I order that the Landlord can keep the security deposit in the amount of \$600.00 in partial satisfaction of the claim for unpaid rent.

The Landlord is granted an order of possession effective January 31, 2020 after service on the Tenant and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$2500.00.

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: December 19, 2019

Residential Tenancy Branch