



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST UNITED CHURCH SOCIAL HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNR-S, FF

Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided affirmed evidence. The tenant called in late at 14 minutes past the start of the scheduled hearing time and confirmed that no documentary evidence was submitted by him. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on December 6, 2019. The landlord has submitted a copy of the Canada Post Receipt and Tracking label as confirmation. The tenant confirmed receipt of this package and the accompanying documentary evidence.

I accept the undisputed evidence of both parties that the landlord has properly served the tenant with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on January 1, 2014 on a month-to-month basis as per the signed tenancy agreement dated December 13, 2013. The monthly rent began at \$710.00 payable on the 1st day of each month. A security deposit of \$355.00 was paid on December 13, 2013.

The landlord provided affirmed testimony that the tenant was served with a 10 Day Notice to End Tenancy (the 10 Day Notice) dated July 3, 2019 for unpaid rent. It states in part that the tenant failed to pay rent of \$4,070.00 that was due on July 1, 2019 and provides for an effective end of tenancy date of July 19, 2019.

The landlord stated that the tenant was served with the 10 Day Notice via Canada Post Registered Mail on July 3, 2019 and has submitted a copy of the Canada Post Customer Receipt and Tracking label as confirmation. The landlord has also submitted a copy of the Canada Post online tracking history for service which states that attempted service was made on July 4, 2019 and a notice card was left. This was followed up on July 9, 2019 when another attempt was made and a "Final Notice" of an attempted service. On July 26, 2019, the package was returned to the sender as "unclaimed" by the recipient. The landlord submitted a photograph of the returned package which declared that it was returned as "unclaimed" by the tenant.

The tenant argues that although he was provided with a notice from Canada Post to pick up the package, the tenant was unable to collect it at Canada Post. The tenant stated that at this time an incident took place in which the tenant's wallet and identification were stolen by another tenant in the building. The tenant stated that this was reported to the police and a police report and case number was created by the police. The landlord's resident caretaker (M.C.) was notified and provided with the police case number. The tenant stated that without identification Canada Post would not release the package to him and had subsequently returned it to the landlord.

The landlord's agent stated that she is unable to provide any further details of the circumstances as the listed landlord's agent, M.C. is no longer employed by the landlord.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, the tenant has provided undisputed affirmed testimony that although he was given notice of the Canada Post Package, he was unable to obtain it from Canada Post due to his identification being stolen. The landlord's application is dismissed with leave to reapply. The tenant further provided undisputed evidence that the landlord's agent, M.C. was notified shortly thereafter. The landlord's agent, K.H. was unable to provide any comment or further details on the service of the 10 Day Notice. On this basis, I find that the tenant was properly served via Canada Post Registered Mail, but was unable to pick up the notice due to stolen identification. The tenant provided undisputed testimony that the landlord was duly notified shortly thereafter. On this basis, I find that the tenant was unable to respond to the 10 Day Notice.

Conclusion

The landlord's application is dismissed with leave to reapply.

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: January 23, 2020

Residential Tenancy Branch