



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL MNDCL FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 25, 2019 (10 Day Notice), for a monetary order in the amount of \$7,600.00 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

An agent for the landlord SA (agent) attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 19, 2019 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on December 19, 2019. A registered mail tracking number referenced on the cover page of this decision was submitted in evidence. A copy of the registered mail receipt was also submitted in evidence. According to the online registered mail tracking website the tenant did not pick up the registered mail package and it was marked as "unclaimed" and was returned to the sender. Section 90 of the Act states that documents served by registered mail are deemed served 5 days after they are mailed. Therefore, I find the tenant was duly served as of December 24, 2019.

Given that the tenant did not attend the hearing, I consider this matter to be undisputed by the tenant and the hearing continued without the tenant present in accordance with Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

Preliminary and Procedural Matters

Firstly, the agent confirmed that since the application was filed, the tenant vacated the rental unit on February 6, 2020, and as a result, an order of possession is no longer requested. As a result, I will not consider the application for the order of possession.

Secondly, the agent confirmed their email address and was advised that the decision and any resulting order would be sent by email to the landlord. The decision will be sent by regular mail to the tenant as an email address for the tenant was not known to the agent.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The agent affirmed that the landlord assumed this tenancy after purchasing the rental unit on August 15, 2019. The agent stated that monthly rent was \$1,250.00 per month and was due on the first day of each month.

The agent stated that the tenant has failed to pay rent as follows:

- September 2019, \$1,250.00 unpaid.
- October 2019, \$1,250.00 unpaid.
- November 2019, \$1,250.00 unpaid.
- December 2019, \$1,250.00 unpaid.
- January 2020, \$1,250.00 unpaid.
- February 2020, \$1,250.00 unpaid.

The agent stated that the tenant has also not paid any rent since being served with the 10 Day Notice and although the effective vacancy date was listed as December 15, 2019, the tenant did not vacate the rental unit until February 6, 2020.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. Section 26 of the Act applies and states:

Rules about payment and non-payment of rent

26(1) **A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act,** the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Emphasis added]

Section 46(5) of the Act applies and states:

Landlord's notice: non-payment of rent

46(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.**

[Emphasis added]

Based on the above, I find the tenant breached section 26 and 46(5) of the Act by failing to pay rent as claimed on the date that it was due and failed to vacate the rental unit by December 15, 2019, which was the effective vacancy date listed on the 10 Day Notice, and which was not disputed by the tenant. As a result, I find the landlord's application is fully successful in the amount of \$7,600.00; comprised as claimed above, and also includes the \$100.00 filing fee pursuant to section 67 and 72 of the Act. I grant the landlord a monetary order pursuant to section 67 of the Act, for the amount owing by the tenant to the landlord in the amount of **\$7,600.00** as claimed.

I caution the tenant not to breach sections 26 and 46(5) of the Act in the future.

Conclusion

The landlord's application is fully successful.

The landlord has established a total monetary claim of \$7,600.00 as described above. The landlord has been granted a monetary order pursuant to section 67 of the Act, for the amount owing by the tenant to the landlord in the amount of \$7,600.00. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The tenant has been cautioned as described above.

This decision will be sent by email to the landlord and by regular mail to the tenant. The monetary order will be sent by email to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless 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: February 21, 2020

Residential Tenancy Branch