



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

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

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

While the landlords attended the hearing by way of conference call, the tenant did not. I waited until 9:40 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 a.m. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant initiated the dispute resolution process by filing their application first. The tenant chose not to attend the hearing or to submit any disputing documentation for this hearing, accordingly; I hereby dismiss the tenant's application in its entirety. The landlord gave sworn testimony and supporting documentation to show that the tenant was served with their application, evidence and notice of hearing documents by registered mail in accordance with Section 89 of the Act, accordingly; the hearing proceeded and completed in the absence of the tenant.

Preliminary Issue

At the outset of the hearing the landlord advised that the tenant had moved out and no longer requires an order of possession, accordingly; I dismiss that portion of the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to the recovery of the filing fee from the tenant for this application?

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on April 1, 2018. The current monthly rent of \$1127.50 is due on the first of each month. The tenant paid a security deposit of \$550.00 as well as a pet deposit of \$200.00 that the landlord still holds. The landlord testified that the tenant was late in paying rent 11 of the last 12 months. The landlord testified that they have issued 10 Day Notice to End Tenancy for Unpaid Rent or Utilities throughout the tenancy. The landlord testified that the tenant would make partial payments but could not fully catch up and pay the rent in full on time. The landlord issued the most recent 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 6, 2020. The tenant failed to pay rent for March and April as well as accrued late fees as per the tenancy agreement. As of this hearing, the landlord advised that the tenant owes \$2328.00 in unpaid rent.

Analysis

The tenant filed an application to dispute the One Month Notice to End Tenancy for Cause but did not file an application disputing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant failed to pay their rent in full within five days of being

deemed to have received the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the corrected effective date of the notice.

Although the landlord advised that the tenant has moved out, the landlord provided undisputed evidence that the tenant has failed to pay the rent in full. Therefore, I find that the landlord is entitled to \$2328.00 as claimed.

The landlord continues to hold the tenant's security and pet deposit in the amount of \$750.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's deposits in partial satisfaction of the monetary claim.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenant.

Conclusion

The landlord has established a claim for \$2428.00. I order that the landlord retain the \$750.00 in deposits in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1678.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 07, 2020