



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute codes OPR MNR FF

Introduction

This hearing was scheduled pursuant to the *Residential Tenancy Act* (the Act) in response to a successful application filed by the tenant for review of a decision dated February 3, 2020. In the original decision issued by way of a Direct Request Proceeding, the landlord was granted an order of possession and a monetary order in the amount of \$1000.00 for unpaid January 2020 rent and the filing fee. The original decision and orders were subsequently suspended by way of a review consideration decision dated February 10, 2020 pending the outcome of this review hearing.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to service of the landlord's original application and the tenant's service of Notice of Review Hearing on the landlord.

Issues

Should the original decision and order dated February 3, 2020 be confirmed, varied or set aside in relation to each of the following:

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

Is the landlord entitled to a monetary award for unpaid rent, late fees and the filing fee?

Background and Evidence

The tenancy began on January 1, 2019 with a monthly rent of \$900.00 payable on the 1st day of each month. The tenant paid a security deposit of \$450.00 and a pet deposit of \$250.00 at the start of the tenancy which the landlord continues to hold.

The landlord's agent testified that on January 4, 2020 he served the tenant with the 10 day Notice to End Tenancy for unpaid rent by posting a copy to the door of the rental premises. The Notice indicates that the tenant failed to pay rent in the amount of \$900.00 that was due on January 1, 2020. The landlord submitted a witnessed proof of service form which indicates the notice was served at 1:30 p.m. on January 4, 2020. The landlord further testified that the tenant received the 10 Day notice as the tenant came into the office really upset after receiving the Notice and subsequently put a stop payment on a post-dated cheque he had provided to the landlord. The landlord testified they received two post-dated cheques from the tenant dated January 15, 2020 and January 22, 2020. The landlord submitted a copy of the cancelled cheque as evidence as well as a ledger of outstanding rent. The landlord testified the tenant has not paid any rent since and requested to amend his monetary claim for unpaid rent to the date of the hearing. The landlord is requesting a total \$3800.00 which included unpaid rent of \$900.00 per month plus a \$25.00 late fee per month for January 2020 through to April 2020 plus the \$100.00 filing fee for this application.

The tenant disputed receipt of the 10 Day Notice. The tenant acknowledged putting a stop payment on the January 12, 2020 rent cheque and testified that he did so because he has not had working heat since the beginning of the tenancy.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Section 26 of the Act requires that 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.

The parties submitted conflicting testimony with respect to the service of the 10 Day Notice. I find the landlord's testimony and supporting evidence of the cancelled cheque supports the landlord's version that the tenant stopped the payment after being served with the Notice.

I am satisfied that the tenant was deemed served with the 10 Day Notice on January 7, 2020, three days after its posting, pursuant to section 88 & 90 of the Act. The tenant would have had until January 12, 2020 to pay the outstanding amount as per the 10 Day Notice which he failed to do. The tenant acknowledged rent has been withheld and the tenant was not authorized under the Act to do such.

The Order of possession issued on February 3, 2020 is confirmed.

I allow the landlord's amendment request and find that the landlord is entitled to a Monetary Order in the amount of \$3800.00. I am issuing a new monetary order which is to replace the initial order.

Conclusion

The Order of possession issued on February 3, 2020 is confirmed.

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$3800.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 17, 2020

Residential Tenancy Branch