



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY2CITY REAL ESTATE SERVICES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

On December 21, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession for the rental unit and a monetary order for unpaid rent or utilities.

The matter was set for a teleconference call. The Landlords agent (“the Landlord”) attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that the Tenant was served the Notice of Dispute Resolution Proceeding on December 31, 2020 by posting it to the Tenant’s door. The Landlord testified that the Tenant called him a couple days later and confirmed that she received the Notice.

I find that the Tenant was duly served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the *Act*. The Notice is deemed to have been received on January 3, 2021.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and 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?

Background and Evidence

The Landlord testified that the tenancy began on August 1, 2020, as a one-year fixed term tenancy. Rent in the amount of \$2,300.00 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 \$1,1500.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the months of October, November, and December 2020.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 11, 2020, ("the 10 Day Notice"). The Landlord testified that the Tenant was served with the Notice by posting it to the Tenant's door on December 11, 2020.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$6,900.00 which was due on December 1, 2020. 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.

There is no evidence before me that the Tenant made an application to dispute the 10 Day Notice.

The Landlord testified that the Tenant is living in the rental unit and has not paid any rent since the 10 Day Notice was issued.

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

- October 2020, in the amount of \$2,300.00
- November 2020, in the amount of \$2,300.00
- December 2020, in the amount of \$2,300.00
- January 2021 in the amount of \$2,300.00
- February 2021 in the amount of \$2,300.00
- March 2021 in the amount of \$2,300.00

The Landlord asked to amend his application to include the additional three months of unpaid rent and to keep the security deposit of \$1,150.00 in partial satisfaction of his claim.

The Landlord seeks an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$13,800.00.

The Landlord testified that there was a previous hearing related to emergency repairs held on November 17, 2020; however, the Decision of the Arbitrator did not authorize the Tenant to withhold payment of rent.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant did not pay 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 ended 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, effective two days after service on the Tenant. 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 tenancy agreement requires the Tenant to pay \$2,300.00 in rent each month. I accept the Landlords testimony that the Tenant failed to pay the rent cited in the 10 Day Notice.

I also accept the Landlords testimony that the rent has not been paid for January, February, and March 2021. I find it is reasonable to allow the Landlord to amend the application to include an additional three months of unpaid rent. The Landlord waited 2.5 months for the hearing and the Tenant is living in the unit and aware that the tenancy agreement requires her to pay rent of \$2,300.00 each month.

I find that the Tenant owes the Landlord \$13,800.00 for fix months of unpaid rent.

I order that the Landlord can keep the security deposit in the amount of \$1,150.00 in partial satisfaction of the award 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 \$13,900.00 comprised of \$13,800.00 in unpaid rent for the above-mentioned months and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$1,150.00 towards the award of \$13,900.00, I find that the Landlord is entitled to a monetary order in the amount of \$12,750.00. 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.

The Tenant owes the Landlord \$13,800.00 in unpaid rent.

I order that the Landlord can keep the security deposit in the amount of \$1,150.00 in partial satisfaction of the claim.

The Landlord is granted an order of possession for the rental unit effective two days 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 \$12,750.00.

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: March 18, 2021

Residential Tenancy Branch