



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing convened as a result of a Landlord's Application for an Order of Possession and monetary compensation by way of the Direct Request proceeding pursuant to section 55(4) of the *Residential Tenancy Act*. The Landlord also sought recovery of the \$100.00 filing fee. As the tenancy agreement was not signed by either party, the Adjudicator adjourned the Landlord's Application to a participatory hearing.

The participatory hearing was scheduled for teleconference before me at 9:30 a.m. on this date. Only the Landlord and her husband, Z.Z., called into the hearing. Z.Z. gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:47 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and her spouse and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. Z.Z., testified that they served the Tenant with the Notice of Hearing and the Application on May 15, 2021 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of May 20, 2021 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

Z.Z. testified that the Tenant vacated the rental unit on or about June 24, 2021. As such, the Landlord's request for an Order of Possession was no longer applicable. I therefore dismiss this claim without leave to reapply.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for unpaid rent?
2. Should the Landlord recover the filing fee paid for this Application?

Background and Evidence

In support of the claim Z.Z. testified as follows. This tenancy began January 29, 2021. The Tenant paid monthly rent in the amount of \$1,500.00 on the 29th of the month preceding the month for which rent was payable. The Tenant also paid a security deposit of \$750.00 which the Landlord continues to hold.

Z.Z. stated that the Tenant failed to pay rent on March 29, 2021 following which the Landlord issued the Notice. Z.Z. confirmed that the Tenant failed to pay the outstanding rent and failed to dispute the Notice within five days of service of the Notice. Z.Z.

further testified that the Tenant also failed to pay rent on April 29 and May 29 and vacated the rental unit some time prior to June 24, 2021.

Analysis

Based on the above, the Landlord's spouse's undisputed testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent 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.

Under section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent.

I find that the Landlord has established a total monetary claim of \$4,600.00 comprised of unpaid rent for March, April and May 2021 and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$750.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$3,850.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy. As the Tenant vacated the rental unit prior to the hearing, the Landlord's request for an Order of Possession is dismissed without leave to reapply.

The Landlord is entitled to monetary compensation for unpaid rent and recovery of the filing fee, may keep the security deposit, in partial satisfaction of the claim, and is granted a monetary order for the balance due.

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: September 13, 2021

Residential Tenancy Branch