



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 was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served a 10 Day Notice dated October 8, 2021; with a request for a monetary order of \$2,200.00 for outstanding unpaid rent from the Tenant; and to recover the \$100.00 cost of his Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 14 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about it. During the hearing the Landlord was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that his assistant served the Tenant with the Landlord's Notice of Hearing documents and evidentiary submissions by posting them on the rental unit door on October 24, 2021. The Landlord provided a Proof of Service form signed by the Landlord's assistant who served the documents for the Landlord. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I,

therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and he confirmed these addresses in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider his written or documentary evidence to which he pointed or directed me in the hearing. I also advised him that he is not allowed to record the hearing, and that anyone who was recording it was required to stop immediately. The Landlord affirmed that he was not recording the hearing.

The Landlord said the Tenant vacated the rental unit on October 29, 2021, and therefore, that he no longer seeks an order of possession from this proceeding.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The tenancy agreement states, and the Landlord confirmed the following details of the Parties' tenancy. The fixed-term tenancy began on August 1, 2021 and was to run to July 31, 2022, with a monthly rent of \$2,200.00, due on the first day of each month. The Tenant paid the Landlord a security deposit of \$1,100.00, and no pet damage deposit.

The Landlord submitted a copy of the 10 Day Notice that he said was served to the Tenant. The 10 Day Notice was signed and dated October 10, 2021, and has the rental unit address on it. The Landlord said the 10 Day Notice was served by posting it on the rental unit door on October 10, 2021. It has an effective vacancy date of October 21, 2021, which is automatically corrected to October 23, 2021 by the Act. The 10 Day Notice was served on the grounds that the Tenant failed to pay \$2,200.00 in rent that was due to the Landlord on October 1, 2021.

Analysis

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

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.” There is no evidence before me that the Tenant had a right to deduct any portion of her rent from the monthly rent due to the Landlord.

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content. I find that the Landlord’s 10 Day Notice is valid and enforceable.

Section 46 of the Act permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. A tenant has five days after receipt of an eviction notice for unpaid rent to pay the overdue rent or to dispute the notice by applying for dispute resolution. Failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, I find the Tenant received the 10 Day Notice on October 13, 2021, three days after it was posted to the door, pursuant to section 90. Accordingly, and pursuant to section 46 of the Act, the Tenant had until October 18, 2021, to dispute the 10 Day Notice by applying for dispute resolution or to pay rent in full. The Tenant performed neither of these actions. I find that overdue rent has not been paid, and that rent in the amount of \$2,200.00 remains outstanding. Accordingly, I award the Landlord with **\$2,200.00** from the Tenant for unpaid rent, pursuant to sections 46 and 67 of the Act.

Having been successful in his Application, I find the Landlord is also entitled to an award of **\$100.00** from the Tenant in recovery of the Application filing fee, pursuant to section 72 of the Act.

Summary and Offset

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant’s \$1,100.00 security deposit in partial satisfaction of the Landlord’s monetary awards.

I authorize the Landlord to retain the Tenant's \$1,100.00 security deposit, and I grant the Landlord a Monetary Order of **\$1,200.00** for the remaining balance of the awards owed him by the Tenant, including his \$100.00 Application filing fee.

Conclusion

The Landlord is successful in his Application for recovery of unpaid rent from the Tenant of **\$2,200.00**, and for recovery of the **\$100.00** Application filling fee.

The Landlord is authorized to retain the Tenant's \$1,100.00 security deposit in partial satisfaction of the Landlord's monetary awards. I grant the Landlord a Monetary Order of **\$1,200.00** from the Tenant, pursuant to section 67 of the Act for the remainder of the monetary awards owed by the Tenant to the Landlord.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: December 31, 2021

Residential Tenancy Branch