



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FFL

Introduction

On October 4, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking an order of possession for the rental unit; a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord attended the teleconference hearing; however, the Tenants did not. The Landlord provided affirmed testimony that the Tenants were served the Notice of Dispute Resolution Proceeding in person at the rental unit on October 9, 2021.

I find that the Tenants have been served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the *Act*. The hearing proceeded.

The Landlord was provided the opportunity to present their 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?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlords testified that the tenancy began on January 15, 2021, on a month-to-month basis. Rent in the amount of \$2,750.00 is to be paid to the Landlord by the fifteenth day of each month. The Tenants paid the Landlord a security deposit in the amount of \$1,375.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants failed to pay all the rent when it was due under the tenancy agreement for many months, and they were in arrears owing \$4,775.00 as of September 15, 2021. The Landlord testified that on September 17, 2021 the Tenant made a payment of \$1,750.00 which was applied to the rent arrears and left a balance of \$3,025.00 rent owing. The Landlord provided a rent payment ledger showing the dates and amounts of rent paid by the Tenant. The Landlord provided a copy of banking records showing e-transfer rent payments made by the Tenant.

The Landlord testified that on September 18, 2021, the Tenants was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 18, 2021, ("the 10 Day Notice"). The Landlord testified that the Tenants were served with the 10 Day Notice in person on September 18, 2021. The Landlord provided a copy of the 10 Day Notice. The Landlord provided a proof of service document signed by a witness confirming service of the 10 Day Notice.

The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$2,750.00 which was due on September 18, 2021. The 10 Day 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 Tenants made an application to dispute the 10 Day Notice.

The Landlord testified that the Tenants did not pay the rent due as cited within the 10 Day Notice within 5 days of receiving the 10 Day Notice. The Landlord wants to end the tenancy and receive an order of possession, since the rent was not paid within 5 days.

The Landlord testified that the Tenants made payments towards rent arrears on October 12, 2021. The Landlords stated that the Tenant made a payment of \$3,000.00 and another payment of \$2,500.00 to them for a total amount of \$5,500.00.

The Landlord testified that the Tenants still owes \$1,275.00 in unpaid rent. The Landlord is seeking a monetary order for unpaid rent in the amount of \$1,275.00.

Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities, I find that the Tenant did not pay all 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.

Based on the Landlords affirmed testimony and evidence, I find that the Tenant owes the Landlord \$1,275.00 in 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 \$1,375.00 comprised of \$1,275.00 in unpaid rent and the \$100.00 fee paid by the Landlord for this hearing. I grant the Landlord a monetary order for \$1,375.00.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement and did not file to dispute the 10 Day Notice or pay the rent owing within 5 days. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

The Landlord is granted an order of possession effective two (2) 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 \$1,375.00.

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: December 09, 2021

Residential Tenancy Branch