



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant.

Only the landlord's agent appeared. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on November 9, 2021 and successfully delivered to the tenant on November 13, 2021 a Canada post tracking number was provided as evidence of service. I find that the tenant has been duly served in accordance with the Act.

I note that on December 20, 2021, the Residential Tenancy Branch sent the tenant by email a reminder notification of the hearing, scheduled for today, December 23, 2021 at 11:00 am.

The landlord's agent, gave testimony and 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 for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on January 1, 2021. Rent in the amount of \$1,390.00, plus \$75.00 for parking was payable on the first of each month. A security deposit of \$695.00 was paid by the tenant.

The landlord's agent testified that the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on October 8, 2021, by posting to the door. The Notice shows the tenant had failed to pay rent in the amount of \$2,930.00. Filed in evidence is a copy of the Notice. Filed in evidence is a copy of the proof of service.

The landlord's agent testified that the tenant did not pay the outstanding rent, which was for September and October 2021, and did not dispute the Notice. The agent stated that they tried to work with the tenant and come to a repayment plan which they did on November 8, 2021. The tenant was to pay \$400.00 immediately and then \$400.00 on the 15th day of each month commencing December 2021; however, the tenant failed to meet their obligation under the repayment plan as they have paid nothing towards the amount listed in the Notice and the agreement is voided.

The landlord's agent stated that also seek to recover the amount of \$50.00 for the two cheques that were returned for non insufficient funds (the "NSF").

The landlord seeks an order of possession and a monetary order for unpaid rent and the NFS fees in the total amount of \$2,930.00.

Analysis

Based on the above, the 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.

I accept the evidence of the landlord's agent that they tried to make a repayment plan with the tenant and that the tenant has failed to meet their obligation under that agreement.

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 the tenant has failed to pay rent for September and October 2021, in the amount of **\$2,930.00**. I find the landlord is entitled to recover the cost of the NSF fee in the amount of **\$50.00**.

I find that the landlord has established a total monetary claim of **\$3,080.00** comprised of unpaid rent, the NSF fees and the \$100.00 fee paid by the landlords for this application.

I order that the landlords retain the security deposit of **\$695.00** in partial satisfaction of the claim and I grant the landlords an order pursuant to section 67 of the Act, for the balance due of **\$2,385.00**. This 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 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.

The landlord is granted an order of possession and may keep the security deposit and interest in partial satisfaction of the claim. I grant 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: December 23, 2021

Residential Tenancy Branch