



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord's agent testified that on September 23, 2022, the tenant was personally served with a copy of the Application for Dispute Resolution and Notice of Hearing. A witnessed proof of service form was submitted as evidence.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord's agent testified that the tenant did not vacate the rental unit until November 29, 2022 and therefore asked to amend the claim to include outstanding

rent for the month of November 2022. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the amendment request.

As the landlord's agent confirmed the tenant has vacated the rental unit, the landlord's application for an order of possession was withdrawn.

Issues

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy for this one-bedroom basement unit began on October 30, 2021 with a monthly rent of \$1200.00 payable on the 1st day of each month. The tenant paid a security deposit of \$600.00 at the start of the tenancy.

The landlord submitted a copy of a 10 Day Notice dated September 2, 2022. The 10 Day Notice indicates an outstanding rent amount of \$1200.00 which was due on September 1, 2022.

The landlord's agent testified that on September 2, 2022 the tenant was personally served with the 10 Day Notice. A witnessed proof of service of the 10 Day Notice was provided with the application.

The landlord's agent testified that the tenant did not pay the outstanding amount of rent as indicated in the 10 Day Notice within five days of service of the Notice and it still remains outstanding. The landlord's agent testified that the tenant subsequently paid rent for October 2022 but failed to pay any rent for November 2022.

The landlord's amended monetary claim is for outstanding rent in the amount of \$2400.00. The landlord's agent testified that this includes unpaid rent for the months of September and November 2022.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted an end to the tenancy.

I am satisfied that the tenant was served with the 10 Day Notice on September 2, 2022.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

I accept the landlord's uncontested evidence and claim for outstanding rent of \$2400.00 for the months of September and November 2022. The landlord is entitled to a monetary award for this amount.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$2500.00.

The landlord continues to hold a security deposit of \$600.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1900.00.

Conclusion

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$1900.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 27, 2023

Residential Tenancy Branch