



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:

- a monetary order for unpaid rent pursuant to section 67;
- 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. to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and make submissions.

The landlord testified that on December 16, 2022, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail to a forwarding address provided by the tenant. The landlord provided a registered mail receipt and tracking number in support of service.

Based on the above evidence, I find the tenant to be deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 &/or 90 of the Act. The hearing proceeded in the absence of the tenant.

Issues

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

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

Background and Evidence

The tenancy began on May 1, 2015 and ended on November 21, 2022. The monthly rent prior to the end of tenancy was \$4313.0 payable on the 1st day of each month. The tenant paid a security deposit of \$2000.00 at the start of the tenancy which the landlord continues to hold. The landlord testified that a cheque for return of the security deposit was sent to the tenant on December 5, 2022 but the cheque was never cashed.

The landlord's claim is for outstanding rent in the amount of \$11,501.33. The landlord testified that this includes unpaid rent up to November 20, 2022. The landlord submitted a tenant account ledger depicting the outstanding balance.

The landlord was claiming rent for the month of October 2022 even though the landlord had issued the tenant a Two Month Notice to End Tenancy on August 12, 2022 with an effective date of October 31, 2022. The landlord stated they were pursuing the October 2022 rent as the tenant failed to vacate by the effective date of the Two Month Notice. The landlord submits the tenant subsequently signed a mutual agreement to end tenancy effective November 20, 2022.

Analysis

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.

Section 51 (1) of the Act provides that a tenant who receives a Notice to End Tenancy for landlord's use of property is entitled to receive from the landlord an amount that is equivalent to one month's rent payable under the tenancy agreement.

I accept the landlord's uncontested evidence and find that the tenant was obligated to pay monthly rent in the amount of \$4313.00 and at the end of the tenancy had accrued an outstanding balance of \$11,501.33 as supported by the account ledger. However, I find that since the tenant had been issued a Two Month Notice for landlord use of property, the tenant was still entitled to one-month free rent pursuant to section 51 of the Act. The fact that the tenant overheld then subsequently signed a mutual agreement does not invalidate the Two Month Notice. There is nothing in the mutual agreement which states the tenant agreed the Two Month Notice be void.

Therefore, I find the landlord is entitled to unpaid rent in the amount of \$7,188.33.

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 \$7,288.33.

The landlord continues to hold a security deposit of \$2000.00. Using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$5,288.33.

Conclusion

I grant the landlord a Monetary Order in the amount of \$5,288.33. 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: July 10, 2023

Residential Tenancy Branch