



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Landlord's application concerning a 10-Day Notice to End Tenancy for Unpaid Rent (Notice). The Landlord had requested an order of possession, a monetary order for unpaid rent to date, and recovery of the filing fee.

Preliminary Matters

At the start of the hearing, the Landlord's agent testified that the Tenant had passed away a few days prior to the hearing. The Landlord's agent further advised that they had possession of the rental unit, were in the process of cleaning it, and thus would not require an order of possession.

Issue to be Decided

Did the Tenant owe rent?

Background and Evidence

The tenancy commenced on November 1, 2020 for a fixed one-year term, and continued thereafter on a month-to-month basis. A security deposit of \$1,500.00 was paid on October 15, 2020, and the Landlord retains this deposit. The initial rental rate was \$3,000.00 per month. The Landlord's agent testified that in August 2021, the rent was reduced \$200.00 in exchange for the Tenant releasing her parking spot to another tenant for their use. The rent was further reduced \$200.00 when the Tenant found a tenant for the downstairs unit. However, this deduction remained in effect only until

October 2022 when that downstairs tenant moved out. The Landlord's agent provided documentary evidence dated November 21, 2022, confirming the Tenant's monthly rental rate at \$2,800.00. The Landlord's agent also confirmed the monthly rental rate at this amount in a letter to the Tenant dated March 12, 2023. The letter further stated that as of that date, the Tenant had unpaid rent of \$800.00 from December 1, 2022 to March 1, 2023. The Landlord's agent testified that the Tenant had accumulated additional unpaid rent of \$600.00 for April, May and June, 2023. As of the date of the hearing, unpaid rent totaled \$1,400.00.

The Landlord issued the Notice on March 16, 2023, and served the Tenant by posting it to the door of the rental unit that day. The Landlord's agent testified that the Tenant had received the Notice because shortly after posting, with the Notice in her hand she had approached him about it. A copy of the Notice and proof of service are in evidence. I find the Notice complies with section 52 of the Act and service was effectively made in compliance with section 88(g) of the Act.

The Landlord provided the Notice of Dispute Resolution and copies of evidence to the Tenant by registered mail. Canada Post tracking records indicate that on April 28, 2023 the Tenant refused to accept the item and it was ultimately returned to the Landlord. Under sections 89 and 90, I deem the Tenant served with the Notice of Dispute Resolution on May 3, 2023. Additionally, RTB records indicate that the Tenant made no contact with the Branch concerning this matter, suggesting that up to the date of her death, the Tenant had no intention of appearing at this hearing or otherwise defending against the Landlord's application.

Analysis

Section 26(1) obligates a tenant to pay rent on the day it is due. The evidence in this case supports a finding that the monthly rental rate was \$2,800.00 due on the first day of the month. The Tenant had consistently paid \$200.00 less for rent from December 1, 2022 through June 1, 2023. I find the Tenant owed \$1,400.00 in unpaid rent.

Section 72(1) of the Act permits an arbitrator to award one party recovery of the filing fee from the other party. Generally, a party that is successful and receives a favorable decision is awarded recovery of the filing fee paid. I find the Landlord met his onus of proof in this matter and, as the successful party, I find the Landlord is entitled to recover the filing fee.

Conclusion

The Landlord's application is granted. I find the tenancy is terminated the date of this hearing, June 16, 2023. The Landlord is entitled to unpaid rent and recovery of the filing fee in the amount of \$1,500.00. The Landlord is authorized to retain the Tenant's security deposit of \$1,500.00 in satisfaction of the monetary award.

The security deposit has accrued interest in the amount of \$13.38. I find it appropriate under the circumstances that the Tenant's estate be awarded this amount from the Landlord. An order to this effect is provided to the Landlord in consideration of the Tenant's passing and the current lack of knowledge whether an estate has or will be opened.

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 4, 2023

Residential Tenancy Branch