



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNDC, MNSD, FF

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;
- an order of possession for breach of an agreement with the landlord, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution hearing package on January 3, 2017, at the rental unit where the tenant is residing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was served with the landlord's application on January 3, 2017.

The landlord clarified that she was seeking unpaid rent and no further monetary amount, therefore her claim for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to an order of possession for breach of an agreement with the landlord?

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

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

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on January 1, 2016 on a month-to-month basis. Rent in the amount of \$1,500.00 is payable on the first of each month. The tenant remitted \$600.00 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The landlord testified that she served the tenant with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 20, 2016 ("10 Day Notice"), on the same date, by way of posting to the rental unit door where the tenant resides. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on November 23, 2016, three days after its posting.

The landlord seeks a monetary order of \$3,456.00 for unpaid rent from October 2016 to January 2017. The landlord claimed that the tenant paid a total of \$2,544.00 in rent for the above four months.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the overdue rent or file an application to dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to an order of possession.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$1,500.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from October 2016 to January 2017. Therefore, I find that the landlord is entitled to \$3,456.00 in rent.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$3,556.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$600.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$2,956.00.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of \$2,956.00 against the tenant.

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, 2017

Residential Tenancy Branch