



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNRL-S OPU

Introduction

This hearing was scheduled to convene at 9:30 a.m. this date concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities, an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony, and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord testified that the tenant was served with the Application for Dispute Resolution and notice of this hearing (the Hearing Package) in person with a witness present on May 9, 2019 at the rental unit. I accept that testimony, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on November 1, 2015 and expired on October 31, 2016 thereafter reverting to a month-to-month tenancy. A copy of the tenancy agreement has been provided as evidence for this hearing which specifies rent in the amount of \$2,500.00 per month payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,250.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling.

The landlord further testified that the tenant agreed to a rental increase after the fixed term expired in the amount of \$80.00 per month, but not in writing.

The tenant failed to pay rent when it was due in March, 2019 and paid no rent for April. On April 26, 2019 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided as evidence for this hearing and it is dated April 26, 2019 and contains an effective date of vacancy of May 6, 2019 for unpaid rent in the amount of \$5,160.00 that was due on April 1, 2019. The tenant has not paid rent since and arrears have continued to accumulate for May and June, 2019, and the landlord seeks a monetary order for the unpaid rent for the months of March through June, 2019 in the amount of \$10,320.00.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the Notice, and the landlord seeks an Order of Possession, a monetary order and an order permitting the landlord to keep the \$1,250.00 security deposit.

Analysis

Firstly, once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent in full or dispute the Notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant does neither within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy. The landlord testified that the Notice was served by posting it to the door of the rental unit on April 26, 2019, which is deemed to have been served 3 days later, or April 29, 2019. The landlord testified that the tenant did not pay the rent, arrears continued to accumulate, and the landlord has not been served with an Application for Dispute Resolution by the tenant disputing the Notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed

to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy contained in the Notice has passed, I grant the Order of Possession on 2 days notice to the tenant.

With respect to the monetary claim, the tenancy agreement specifies that rent is \$2,500.00 per month, and the landlord testified that the tenant agreed, although not in writing, to a rent increase of \$80.00 per month commencing after the end of the fixed term. I have no proof of that, and I find that the tenant is in arrears of rent for the months of March, April, May and June, 2019 in the amount of \$10,000.00, at \$2,500.00 per month.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$1,250.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the total amount of \$8,850.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further order the landlord to keep the \$1,250.00 security deposit, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$8,850.00.

This order is final and binding and may be enforced.

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: June 18, 2019

Residential Tenancy Branch