



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, CNR, MNR, & FF

Introduction

This hearing dealt with cross applications by the parties. The tenant filed an application to dispute a 10 day Notice to End Tenancy due to unpaid rent. The landlord filed an application seeking an Order of Possession and a monetary claim due to non-payment of rent.

Although the tenant filed an application for dispute resolution and was served with notice of the landlord's application and notice of hearing documents by registered mail, the tenant did not appear for the hearing. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent. As the tenant failed to appear for this proceeding I dismiss the tenant's application without leave to re-apply.

I proceeded with the hearing in the tenant's absence being satisfied that the tenant was served in accordance with section 89 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession and a monetary claim due to the tenant's failure to pay rent?

Background and Evidence

Although the tenant did not appear for the hearing he provided some documents as part of his application for Dispute Resolution. The documents included a copy of a 10 day Notice to End Tenancy due to Unpaid rent dated May 13, 2009 for \$6,000.00 in unpaid rent owed as of May 1, 2009 and signed statement dated May 21, 2009 by the tenant which states that the tenancy was created by a verbal agreement in January 2008 for the monthly rent of \$2,000.00. The tenant also states in this document that he was completing renovations in the rental unit for a modest wage. The tenant alleges in this document that the landlord refused to pay for renovations completed by him on May 10, 2009 and then the landlord attempted to raise the rent to \$3,000.00 a month. After the tenant refused to pay this rent increase he was served with the notice to end tenancy.

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In the hearing the landlord agreed that the monthly rent was \$2,000.00 a month and stated that he originally wanted \$3,000.00 a month. The landlord denied that he attempted to raise the rent to \$3,000.00 in May 2009. The landlord confirmed that the tenant was completing work at the rental unit but stated that the agreement to complete renovations at the rental unit was separate from the tenancy agreement. The landlord submitted that the tenant acknowledges this separation in his written statement by acknowledging that a wage would be paid.

The landlord states that the tenant failed to pay rent since March 1, 2009. The landlord did not explain why three notices to end tenancy were issued on May 13th, 28th and June 1, 2009 and not in March or April 2009. The landlord did not provide any evidence, such as receipts or bank statements, to corroborate his oral evidence that he has not been paid the rent for four months.

The landlord was reluctant to answer questions respecting whether there was a dispute between himself and the tenant about the work being completed at the rental unit but did state that the tenant stopped paying rent due to this alleged dispute.

The landlord evidence provided included registered mail receipts confirming that two 10 day Notices to End Tenancy due to Unpaid Rent were issued on May 28, 2009 and on June 1, 2009. The landlord did not address the notice raised by the tenant which was served on May 13, 2009 or provide evidence that a notice was served on May 13, 2009.

The landlord is seeking an Order of Possession due to the tenant's failure to pay rent and a monetary claim for the outstanding rent owed from March to July 2009.

Analysis

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*.

I have reviewed all documentary evidence provided by the parties and accept that the tenant has been served with notice to end tenancy dated May 28, 2009 by registered mail. The notice is deemed to have been received by the tenant on June 3, 2009, and the effective date of the notice is amended to June 9, 2009 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has failed to dispute this notice within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. On this basis I grant the landlord an Order of Possession effective **two (2) days** after it is served upon the tenant.

With respect to the landlord's monetary claim, I find that the landlord has only established a loss related to May and June 2009 for the sum of \$4,000.00. I deny the landlord's claim for loss of rent for the months of March and April 2009 as there is insufficient evidence to establish this loss.

I am very concerned about the landlord's failure to serve a 10 Day Notice to End Tenancy due to Unpaid Rent for the months of March and April 2009; the landlord's reluctance to elaborate on what the dispute was with the tenant regarding the renovations, and the subsequent three notices to end tenancy the landlord served on May 13th, May 28th and June 1, 2009 immediately after the apparent dispute arose between the landlord and tenant on approximately May 10th, 2009. Although I am satisfied that there were two separate agreements between the landlord and the tenant, one respecting rent and one respecting work being completed on the rental unit, I am not satisfied that the landlord has established a monetary claim for March and April 2009 without some corroborating evidence because I have reservations about the landlord's credibility.

I question the landlord's credibility based on his failure to act in a consistent manner given the circumstances. I find that a reasonable response to the tenant's failure to pay rent in March and April 2009 would have been to issue a notice to end tenancy. This did not happen and I find that in the absence of a reasonable explanation to explain the landlord's failure to serve notice immediately, calls into doubt the landlord's monetary claim for March and April 2009. I accept that as a result of the dispute between himself and the landlord, the tenant most likely started withholding his rent as of May 2009.

The landlord has also sought future loss of revenue for an additional \$2,000.00 for July 2009; however, pursuant to section 7 of the *Act* the landlord has a duty to mitigate his losses and the landlord can make a new application for loss of revenue in July 2009 by providing evidence that there was an attempt to mitigate any losses.



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Conclusion

The tenant failed to appear and I dismiss his application without leave to re-apply.

I have granted the landlord's application in part. I have determined that the landlord is entitled to an Order of Possession as the tenant is conclusively presumed to have accepted the end of the tenancy. I have also determined that the landlord has established a total monetary claim for the sum of **\$4,100.00** comprised of outstanding rent for May and June 2009 plus the recovery of the \$100.00 filing fee paid for this application.

Dated: July 13, 2009.

Dispute Resolution Officer