



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Both parties agree this tenancy began on June 15, 2004 on a month to month basis. Rent is \$875.00 per month, payable on the first day of each month, and a security deposit of \$437.50 was paid on May 5, 2004.

Based on affirmed testimony, the Landlord issued a One Month Notice to End Tenancy for Cause to the Tenant (the "Notice") on July 19, 2010, by dropping in the mail slot, with a stated effective date of August 23, 2010. Under the Act, a notice under this Section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month that rent is payable under the tenancy agreement. Thus I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to August 31, 2010.

The Notice explains that the Tenant had ten days to dispute the Notice. It also explains that if the Tenant does not file an Application to Dispute the Notice within ten days, then the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice. The Tenant did not file an Application to dispute the Notice by the effective end date.

The Agent for the Landlord supplied evidence and gave affirmed testimony that the Tenant is repeatedly late in paying rent, having made late payments for each month of this calendar year, as well as having made a partial payment in August and no payment in September. The Agent for the Landlord testified that the Tenant owes \$475.00 for the month of August and \$875.00 for the over holding costs for the month of September.

The Agent for the Landlord testified that the Tenant has been issued several One Month Notices to End Tenancy throughout the course of this calendar year and the Landlord has spoken to the Tenant on numerous occasions about the late and partial payments of rent.

The Tenant did not dispute and in fact confirmed the testimony of the Agent for the Landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant did not apply to dispute the Notice and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Therefore, I find the Notice is valid and that the Landlord is entitled to an order of possession effective **at 1:00 p.m. on September 30, 2010**, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$1,400.00** comprised of \$475.00 in unpaid for August, \$875.00 in over holding fees for September and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord withhold the security deposit and interest of \$453.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$947.00**.

Conclusion

The Tenant did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim and is granted a monetary order for the balance due of \$947.00.

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: September 28, 2010.

Dispute Resolution Officer