



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MND, MNDC, FF

Introduction

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

Although served with the Application for Dispute Resolution and Notice of Hearing by posting on the door on January 6, 2011, the Tenant did not appear.

The Landlord appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and make submissions to me.

Issue(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

Based on the affirmed testimony and evidence of the Landlord, I find that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on December 21, 2010, by posting on the door. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant did not apply to dispute the Notice.

The monthly rent is \$850.00 and a security deposit of \$425.00 was paid at the beginning of the tenancy.

The Landlord testified that the Tenant owes unpaid rent for November of \$350.00, \$850.00 for December, \$850.00 for January, \$850.00 for February and \$1,000.00 for assessed damages, for a total claim of \$3,900.00.

The Landlord provided no evidence of payments and upon query I heard testimony from the Landlord that he records the Tenant's payments by making a note on the tenancy agreement. I heard testimony from the Landlord that he has lost his copy of the tenancy agreement marking the Tenant's payments and although he gives the Tenant a receipt for her cash rent payments, he failed to submit these copies.

Analysis

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

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession effective **2 days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find the Landlord was obligated to prove his loss of rent through tenant ledger sheets, receipts or any other form of accounting methods. I find the Landlord submitted insufficient evidence to prove his monetary claim for unpaid rent for November, December and January and I **dismiss** this portion of his claim in the amount of \$2,050.00 without leave to reapply.

I have not allowed the Landlord's claim for the February 2011 rent for \$850.00 as the same is not yet due and payable and the Landlord has not suffered that loss as of the day of the hearing. However, the Landlord is at liberty to re-apply for a monetary claim for February rent.

I have not allowed the Landlord's claim for damages for \$1,000.00 as the tenancy has not yet ended and the Tenant has not had an opportunity to remediate the rental unit, if required. The Landlord is at liberty to re-apply for a monetary claim for damages.

As the Landlord has been successful in his Application for an Order of Possession, I allow him to deduct \$50.00 from the security deposit for recovery of his filing fee.

Conclusion

The Tenant failed to pay rent and did not apply 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.

The Landlord's claim for unpaid rent for November, December and January is dismissed, without leave to re-apply.

The Landlord is granted leave to re-apply for the February 2011 rent and damages.

The Landlord is allowed to deduct \$50.00 from the security deposit for the filing fee.

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 21, 2011.

Residential Tenancy Branch