



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord only. The tenant did not attend.

The landlord provided confirmation of service of notice of this hearing via registered mail to the tenant. The landlord testified that he had spoken with the tenant last night and they had worked out some of the issues. The landlord further testified that he had informed the tenant that he would be attending this hearing. The landlord stated the tenant told him he would also be attending.

I accept the tenant has been sufficiently served with notice of this hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act* (Act).

Background and Evidence

The landlord testified the tenancy began in February 2008 as a one year fixed term tenancy that converted to a month to month tenancy on February 1, 2009. The amount of rent at the start of the tenancy was \$1,250.00 that the landlord states he reduced to \$1,050.00 in February 2009. A security deposit of \$625.00 was paid in January 2008.

The landlord testified that the tenant was a project manager and as a result of his job travels substantially. During the first couple of years of the tenancy the landlord states the tenant would fail to pay rent but would later make lump sum payments.

The landlord provided into evidence a ledger with an accounting of the current arrears he attributes to the tenant's account. The ledger outlines the tenant has not paid any of the rent for the months of January, February, March, July, August, September, and

October of 2010 and May and June of 2011. The ledger also indicates rent paid for April 2010 was \$50.00 less than the rent amount and April 2011 was \$100 less than the amount due.

The landlord has also submitted a copy of a written note that he asserts is an agreement of a rent increase that the tenant signed in mid March 2011. The landlord states that the tenant had given notice to end the tenancy and then decided he wanted to stay and the parties agreed to a new rental amount of \$1,150.00 but no new written agreement was provided.

When the tenant failed to pay any rent for the month of May 2011, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on May 28, 2011 with an effective vacancy date of June 7, 2011 for unpaid rent in the amount of \$1,150.00. From the email correspondence provided into evidence I accept that the tenants had received the 10 Day Notice to End Tenancy for Unpaid Rent on May 28, 2011.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

Based on the landlord's testimony and in the absence of any contrary testimony, I find that agreed upon amount for rent does not constitute a valid rent increase from an existing tenancy. However, as the landlord had accepted the tenant's notice to end tenancy and had acted upon it by showing the rental unit to at least two potential tenants, I find that the agreement signed by the tenant in mid March 2011 was, in fact, a new tenancy agreement with a newly agreed upon rental amount and not a rent increase.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on May 28, 2011 and the effective date of the notice is June 7, 2011. I accept the evidence before me that the tenant failed to pay the rent owed in full 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.

I also accept, in the absence of any evidence or testimony to the contrary the landlord's ledger as an accurate account of the amount of rent owed to the landlord.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$9,900.00** comprised of \$9,800.00 rent owed and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 28, 2011.

Residential Tenancy Branch