



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession and a monetary order for unpaid rent. The Application was initially made under the direct request process, however, the matter was adjourned to a participatory hearing which was held today.

Two Agents for the Landlord appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agents testified they sent the Tenant the Notice of Hearing by registered mail, sent on August 23, 2011. Under the Act the Tenant was deemed served five days later. The Agents testified that the Tenant had spoken to them briefly before the hearing and they confirmed the phone number with him to call into the hearing. Despite this the Tenant did not appear at the hearing. I find the Tenant has been duly served in accordance with the Act.

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.

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 testimony of the Agents, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on August 3, 2011, by posting on the door. The Agents testified that the Tenant did not pay his rent of \$575.00 on August 1, 2011.

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 Agents testified that the Tenant had also not paid rent for September of 2011.

The Agents testified that the Tenant had informed them he had not paid his rent because he felt work was required on the rental unit.

Analysis

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

I find the Tenant has breached the Act and tenancy agreement by failing to pay rent when due. Under section 26 of the Act the Tenant may only withhold rent if he has an order from a Dispute Resolution Officer allowing him to do so. There is no evidence he had such an order. There is also no evidence the Tenant applied to dispute the Notice.

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

I allow the Landlord to amend the Application to include rent for September, a request to keep the security deposit and to recover the filing fee for the Application.

I find that the Landlord has established a total monetary claim of \$1,200.00, comprised of \$575.00 in rent for each of August and September, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of \$287.50 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$912.50**.

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

Conclusion

The Tenant failed to pay rent and 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.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 19, 2011.

Residential Tenancy Branch