



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, FF

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.

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

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?
Is the landlord entitled to a monetary order?

Background and Evidence

The parties agree that the tenancy began on January 13, 2011. Rent in the amount of \$600.00 is payable on the 13th of each month. The tenant paid a security deposit in the amount of \$300.00.

The landlord testified the tenant has not paid rent since April 2011. The landlord filed into evidence a promissory note which states: the tenant owes, \$1,500.00, \$300.00 for April, \$600.00 for May and \$600.00 for June, 2011. To be paid in full by July 20, 2011. The note is dated July 14, 2011 and signed by the tenant.

The landlord testified when the tenant did not pay the promissory note he served the tenant with a ten day notice to end tenancy for non-payment of rent, on August 29, 2011, by posting the document to the door of the rental unit, which was witnessed by his wife and another family member.

The landlord further testified that on September 8, 2011, he served a one month notice to end tenancy for cause by posting to the door of the rental unit, as the tenant did move out, which was again witnessed by his wife and another family member.

The tenant testified that the landlord did not serve him with any notices to end tenancy and the Act should say that the tenant must sign the documents to protect the rights of the tenant.

The tenant testified that he did have trouble paying his rent for April, May and June, 2011, and acknowledges he signed a promissory note. The tenant further testified that during this period he was collecting unemployment insurance and his ex-wife was suing him. But he has repaid the promissory note and has paid all rent that is owed, and his ex-wife even gave him some money to help pay his rent.

The tenant testified that the landlord has not given him any rent receipts, he always paid the landlord in cash and he has recorded a conversation with the landlord regarding November rent. The tenant alleges the recording will show that rent for November is paid and that the landlord is refusing to issue a rent receipt.

During the hearing the tenant's recording was played. You can hear the tenant asking a male for a receipt for November rent, and a male responding, the voice was very faint, "no, no, no" and the rest of what the male was saying was not audible.

The landlord testified that the tenant was asking for receipt for November rent, and he said "no, no, no you have not paid rent, why would I give you a receipt".

Analysis

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

Based on the testimony of landlord, I find that the tenant was served with a notice to end tenancy for non-payment of rent on August 29, 2011, by posting the document to the door of the rental unit, which was witnessed. 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 has five days to dispute the notice.

I find that the tenant was also served with a notice to end tenancy for cause on September 8, 2011, by posting the document to the door of the rental unit, which was witnessed. The notice explains the tenant has ten days to dispute the notice.

The tenant did not file any documentary evidence that would indicate he paid his rent. For example, there were no bank statements to show that he withdrew cash from his bank account when rent was due. I also note there were no witnesses called on his behalf.

The tenant did sign a promissory note in the amount of \$1,500.00 for unpaid rent on July 14, 2011, and payment of the note was to be in full by July 20, 2011. The tenant could have shown his bank records for this period, which would indicate he had the money and withdrew the money to repay the note.

I find the tenant has not paid the outstanding rent and did not apply to dispute the Notices 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 **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 find that the landlord has established a total monetary claim of \$3,950.00 comprised of rent owed and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of \$300.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3,650.00.

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, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: November 28, 2011.

Residential Tenancy Branch