



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim 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.

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 both parties, I find that the Tenant was personally served with a Notice to End Tenancy for non-payment of \$2,340.00 in rent on November 17, 2011 (the "Notice").

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 by filing an Application for Dispute Resolution.

The Tenant testified she thought that by appearing at the hearing she was filing an Application for Dispute Resolution to dispute the Notice. She testified that she has problems with the condition of the rental unit and wants the Landlord to make repairs.

The Tenant agreed she owed the Landlord the \$2,340.00 in rent as shown on the Notice and that she had not paid the Landlord \$1,635.00 for December 2011 rent. She testified she has the money to pay the rent but wanted to see what the outcome of the hearing was.

The Tenant testified repeatedly that she did not understand the Notice. The Tenant testified she thought that by appearing at the hearing she had filed an Application for Dispute Resolution with the Residential Tenancy Branch to dispute the Notice.

Analysis

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

The Tenant did not pay the outstanding rent and did not file an Application for Dispute Resolution to dispute the Notice within five days of receiving it, and therefore is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. This is explained in the Notice.

Furthermore, under section 26 of the Act, the Tenant must pay rent when it is due, whether or not the Landlord complies with the Act, the regulations or the tenancy agreement, unless the Tenant had a right under the Act to deduct all or a portion of the rent, such as an order from a Dispute Resolution Officer. The Tenant had no evidence of a right or an order under the Act allowing her to withhold rent. This is explained in the Notice.

Therefore, 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 further find that the Landlord has established a total monetary claim of \$4,025.00 comprised of outstanding rent from November and December, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of \$673.01, in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$3,351.99**.

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 an Application to dispute the Notice to End Tenancy. Under the law the Tenant is deemed 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 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: December 08, 2011.

Residential Tenancy Branch