



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

The Landlord provided affirmed testimony that they served the Tenant, JP, by registered mail with the Application for Dispute Resolution and Notice of Hearing on January 27, 2012 and provided the receipt and tracking slip information from Canada Post through their testimony. I find that the Tenant, JP, was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter(s)

On the Landlord's Application they have listed two individuals as tenants, SD and JP. The Landlord stated that they had a written tenancy agreement with SD. The Landlord stated that SD gave notice and moved out of the rental unit in November 2011, and did not provide a forwarding address; as a result they have been unable to serve her with the Application. The Landlord stated that SD's boyfriend JP stayed on in the rental unit and a verbal tenancy commenced December 01, 2011, for which they accepted rent from JP. The Landlord provided a letter from JP into evidence which states that JP believes he is the Tenant under a verbal tenancy agreement effective December 2011, and that SD moved out in November 2011. Based on the Landlord's undisputed testimony, I find that JP became a Tenant as defined by the Act effective December 01, 2011, under a verbal tenancy agreement with the Landlord.

For the purposes of the balance of this decision my reference to "the Tenant" refers to JP only.

The Landlord stated that they have only served the Tenant, JP, with the Application.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession, a monetary order for unpaid rent, and the filing fee?

Background and Evidence

The Landlord testified that a prior tenant, SD, gave notice and informed them that she had moved out of the rental unit in November 2011, and that her boyfriend would be staying on in the rental unit. The Landlord stated that Tenant, JP, confirmed that he would be living in the rental unit and paying the rent for December 01, 2011 onward. The Landlord stated that a verbal tenancy with the Tenant, JP, commenced in December 2011 for monthly rent of \$700.00 due on the first of each month. The Landlord stated that no security deposit was paid. The Landlord stated that rent was not received on December 01, 2011, as required by the verbal tenancy agreement. The Landlord stated that they issued a 10 Day Notice to end the tenancy for non payment of rent in December. The Landlord testified that they accepted the monthly rent of \$700.00 from the Tenant for December 2011, which he paid after receiving the Notice in December 2011 and the tenancy continued.

The Landlord testified that the Tenant failed to pay rent for January 2012. The Landlord stated that he served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent by posting it at the rental unit on January 12, 2012 at 4:00 P.M. The Landlord provided a copy of the 10 Day Notice served on January 12, 2012 into evidence. The Landlord stated that the Tenant contacted him and promised to move out. The Landlord testified that the Tenant did not pay the outstanding rent and did not move out within 10 days of the Notice being served.

The Landlord stated that the Tenant did not pay \$700.00 rent for January 2012 and the Landlord stated he received no rental income (\$700.00) for February 2012 as the Tenant has failed to move out or pay rent. The Landlord notified the Tenant that he would be claiming for \$1400.00, representing unpaid rent for January 2012 and rental income loss for February 2012, in his Application filed on January 27, 2012 as the Tenant had not moved out as required by the Notice.

The Landlord requests an order of possession and a monetary order for \$1400.00 for outstanding rent for January 2012 (\$700.00) and loss of rental income for February 2012 (\$700.00).

The Landlord has also applied for the Application filing fee of \$50.00.

Analysis

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

I accept the Landlord's evidence that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on January 12, 2012 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was posted at the rental unit on January 12, 2012, it was deemed to have been served within 3 days. The Notice states that the Tenant had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end from the service date. The Tenant did not pay the outstanding rent and did not apply to dispute the Notice to End Tenancy within five days from the date of service. The deadline to do so was January 20, 2012. The Landlord indicated on the Notice that the Tenant had until January 22, 2012 to vacate the premises, however this date corrects to January 25, 2012 (10 days from the deemed service date) pursuant to the service provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days and the Tenant did not file an Application to dispute the Notice.

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 January 25, 2012, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement is that rent is due on the first of each month. I find that the Tenant failed to pay the rent for January 2012 in the amount of \$700.00.

As the Tenant remained in the rental unit after February 01, 2012 and is still in the rental unit at the time of this hearing, I find that the Landlord is entitled to the rental income loss for February 2012 as he was not been able to rent out the rental unit for February.

I find that the Landlord has established a monetary claim of \$700.00, comprised of rent owing for January 2012 (\$700.00), and rental income lost for February 2012 (\$700.00).

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenant bringing the total amount owing to \$1,450.00.

I grant the Landlord an order under section 67 for **\$1,450.00**.

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. The order of possession requires that the Tenant and all occupants, guests, or other persons vacate the rental unit.

I find that the Landlord is entitled to a monetary order for **\$1,450.00**, for the unpaid rent, rental income loss, and the filing fee. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The orders accompany the Landlord's copy of this decision.

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: February 16, 2012.

Residential Tenancy Branch