



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 an Application for Dispute Resolution by the Landlord for an order of possession, and a monetary order for unpaid rent, compensation for damages or losses, and recovery of the filing fee.

The Landlord provided affirmed testimony that they served the Tenant by registered mail on February 16, 2012 with the Application for Dispute Resolution and Notice of Hearing package. The Landlord provided a copy of the Canada Post registered mail receipt and tracking information into evidence as proof of service.

I find that the Tenant was served the Application and Notice of Hearing in accordance with section 89 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)

The Landlord's Application is requesting, in part, compensation for damages or losses for future removal of the Tenant's possessions and mattresses from the rental unit and property. The Landlord confirmed at the hearing that the Tenant is still residing in the rental unit and has not moved out at this time and that the Landlord has not yet incurred any costs for removal of any of the Tenant's items.

As a result, I find that the Landlord's portion of the Application requesting compensation for damages and losses for removal of the Tenant's possession and mattresses from the rental unit and property is premature and I dismiss this portion of the Landlord's Application with liberty to reapply.

Issue(s) to be Decided

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

Background and Evidence

The Landlord testified that the tenancy agreement was verbal and commenced on September 01, 2011 and rent is due on the first of the month in the amount of \$630.00. The Landlord stated that the Tenant paid the Landlord a security deposit of \$315.00 when the tenancy commenced. The Landlord stated that the Tenant resides in a self contained suite which has its own kitchen and bathroom in the basement of their house which is not shared with the Landlord.

Based on the testimony of the Landlord, the 10 Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on January 21, 2012. This Notice informed the Tenant that the Notice would be cancelled if \$630.00 in outstanding rent was paid within five days. The Notice provided into evidence by the Landlord indicates that the Landlord wanted the Tenant to vacate on January 31, 2012. This Notice also explains the Tenant had five days to dispute the Notice. The Landlord testified that the Tenant failed to pay the rent for January 2012 and is still residing in the rental unit as of the date of this hearing and has failed to pay any rent for February 2012 as well. The Landlord stated that the Tenant refuses to communicate with them. The Landlord stated that the Tenant owes a total of \$1,260.00 in outstanding rent for January 2012 (\$630.00) and February 2012 (\$630.00). The Tenant did not file an Application to dispute the Notice. The Landlord filed an Application for Dispute Resolution on February 14, 2012.

The Landlord requests a monetary order for the outstanding rent \$1,260.00, as well as an order of possession of the rental unit.

The Landlord has also applied for reimbursement of the \$50.00 filing fee for this proceeding.

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 21, 2012 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was served on the Tenant by being posted on the door of the rental unit on January 21, 2012, it was deemed to have been served on January 24, 2011 which is within 3 days of being posted. 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 full amount of 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 29, 2012. The Landlord indicated on the Notice that the Tenant had until January 31, 2012 to vacate the premises,

however this date corrects to February 03, 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, the Tenant did not file an Application to dispute the Notice, and the Tenant is still in the rental unit as of the date of this hearing.

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 February 03, 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. As the Tenant did not vacate the rental unit by February 03, 2011 and is still in the rental unit as of the date of this hearing, I find that the Tenant failed to pay the outstanding rent for January 2012 (\$630.00) and February 2012 (\$630.00), for a total amount of \$1,260.00 in rent owed. I find that the Landlord has established a monetary claim of \$1,260.00.

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 \$1,310.00.

I order that the Landlord retain the security deposit (\$315.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$995.00**.

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.

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$995.00**. 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: March 01, 2012.

Residential Tenancy Branch