



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 or rental income loss and recovery of the filing fee.

The Landlord provided affirmed testimony that he served the Tenant in person with a witness present with the Application for Dispute Resolution and Notice of Hearing package on March 02, 2012. The Landlord's witness RD testified that he was present on March 02, 2012 and that he saw the Landlord hand the Notice of Hearing package with the Application for Dispute Resolution to the Tenant at the rental unit.

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 Issue(s)

The Landlord stated the Tenant damaged the rental unit and has broken a window, however, I find that the Landlord has not filed a claim for damages to the rental unit at this time. The Landlord provided a copy of a One Month Notice to End Tenancy for Cause dated February 20, 2012, which is after the date of the 10 Day Notice to End Tenancy for Unpaid Rent. I find that the 10 Day Notice to End Tenancy of February 13, 2012 was the first Notice issued to the Tenant. I find that it is not necessary to deal with the One Month Notice to End Tenancy for Cause as the balance of my decision makes a finding with regards to the 10 Day Notice to End Tenancy.

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 or rental income loss and recovery of the filing fee?

Background and Evidence

The Landlord testified that the verbal tenancy agreement with the Tenant commenced on November 01, 2011 after the previous tenants moved out. The Landlord stated that the Tenant did not pay a security deposit or pet deposit. The Landlord testified that the rent is due on first day of the month in the amount of \$850.00 and the Tenant paid the rent to the Landlord for November and December 2011 in full. The Landlord stated that the Tenant had rent arrears as of January 2012.

The Landlord stated that on February 13, 2012 he served the 10 Day Notice to End Tenancy to the Tenant due to unpaid rent for January and February 2012. The Landlord's witnesses RD testified that he witnessed the Landlord serve the 10 Day Notice to End Tenancy for Unpaid Rent in person to the Tenant on February 13, 2012 at the rental unit. This Notice informed the Tenant that the Notice would be cancelled if \$1,700.00 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 the rental unit by February 23, 2012. This Notice also explains the Tenant had five days to dispute the Notice. The Landlord provided a copy of the Notice into evidence. The Landlord filed an Application for Dispute Resolution on March 02, 2012, which they served on the Tenant in person.

The Landlord testified that the Tenant paid the January 2012 rent in the amount of \$850.00 and \$375.00 towards the outstanding rent of February 2012 after receiving the Notice, however, the Tenant still owes a balance of \$475.00 for February 2012 rent. The Landlord stated that the Tenant has made no further rent payments and has failed to pay the rent for March 2012. The full amount of the outstanding rent was not paid within five days of service of the Notice and the Tenant did not file an Application to dispute the Notice.

The Landlord testified that because the Tenant has not moved out of the rental unit they also have rental income loss of \$850.00 rent for March 2012.

The Landlord requests an order for the unpaid rent and rental income loss totalling \$1,325.00, 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 and the witness evidence that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on February 13, 2012 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was personally served on the Tenant at the rental unit on February 13, 2012, it was deemed to have been served the same day. 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 February 18, 2012. The Landlord indicated on the Notice that the Tenant had until February 23, 2012 to vacate the rental unit, which is 10 days as specified in the Act. 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 23, 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 and I grant the Landlord an **order of possession** effective **two days after service** on the Tenant.

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 day of each month. I find that the Tenant failed to pay the outstanding rent for January and February 2012 when it was due. I accept that the Tenant paid the January 2012 rent in the amount of \$850.00 and \$375.00 towards the outstanding rent of February 2012 after receiving the Notice, however, the Tenant still owes a balance of \$475.00 for February 2012 rent.

As the Tenant did not vacate the rental unit in accordance with the Notice and is still in the rental unit at the time of this hearing, I find that the Landlord is entitled to rental income loss of \$850.00 for March 2012 as they have not been able to rent out the rental unit for March and the Tenant has not paid rent.

I find that the Landlord has established a monetary claim of \$1,325.00, comprised of the balance of unpaid rent for February 2012 in the amount of \$475.00 and rental income loss for March 2012 in the amount of \$850.00.

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 \$1,375.00.

I grant the Landlord an order under section 67 in the amount of **\$1,375.00**.

Conclusion

I grant the Landlord 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 grant the Landlord a monetary order in the amount of **\$1,375.00**. 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 16, 2012.

Residential Tenancy Branch