



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 or rental income loss and recovery of the filing fee.

The Landlord provided affirmed testimony that he personally served the Tenant at the rental unit with the Application for Dispute Resolution and Notice of Hearing package on March 23, 2012 with a witness present. The Landlord's witness provided affirmed testimony that she saw the Landlord served the Tenant at 12:00 noon on March 23, 2012 at the rental unit with the Application and Notice of Hearing package.

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.

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 or rental income loss and recovery of the filing fee?

Background and Evidence

The Landlord stated the tenancy agreement commenced on December 16, 2011. The Landlord provided a copy of the tenancy agreement into evidence, signed by the Tenant. The tenancy agreement states that the rent is due on the first day of the month in the amount of \$850.00 per month. The Landlord stated that the Tenant paid the Landlord a security deposit of \$425.00 at the start of the tenancy.

Based on the testimony of the Landlord, the 10 Day Notice to End Tenancy for Unpaid Rent was personally served on the Tenant at the rental unit property at 3:30 PM on March 03, 2012. The Landlord provided a copy of the Notice into evidence. This Notice informed the Tenant that the Notice would be cancelled if \$850.00 in outstanding rent for March 2012 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 March 13, 2012. This Notice also explains the Tenant had five days to dispute the Notice. The Landlord testified that the Tenant advised them that he was planning to pay his rent. The Landlord stated that the Tenant did not pay the outstanding rent or move out by the date of the Notice. The Tenant did not file an Application to dispute the Notice.

The Landlord filed an Application for Dispute Resolution on March 20, 2012. The Landlord testified that after they personally served the Tenant with the Application and Notice of Hearing package the Tenant did not pay the rent and is still residing in the rental unit. The Landlord stated that there are several other occupants residing in the rental unit that are not on the tenancy agreement.

The Landlord stated that the Tenant has not moved out and is still in the rental unit at the time of this hearing (April 11, 2012). The Landlord testified that because the Tenant has not moved out of the rental unit they have rental income loss of \$850.00 rent for April 2012.

The Landlord requests an order for the outstanding rent \$850.00 and the rental income loss \$850.00, 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 personally served with the 10 Day Notice to End Tenancy for Unpaid Rent on March 03, 2012 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was personally served on the Tenant on March 03, 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 March 08, 2012. The Landlord indicated on the Notice that the Tenant had until March 13, 2012 to vacate the premises 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 March 13, 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 outstanding rent for March 2012 in the amount of \$850.00

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 (April 11, 2012), I find that the Landlord is entitled to rental income loss of \$850.00 for April 2012 as they were not able to rent out the rental unit for April, and the Tenant has not paid rent.

I find that the Landlord has established a monetary claim of \$1,700.00, comprised of rent owing for March 2012 (\$850.00), and rental income loss for April 2012 (\$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 \$1,750.00.

I order that the Landlord retain the security deposit of \$425.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,325.00**.

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 **\$1,325.00**. 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: April 11, 2012.

Residential Tenancy Branch