



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to an order of possession as claimed?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenant is obligated to pay \$550.00 in rent in advance on the first day of each month. They further agreed that the tenant did not pay rent on March 1. The landlord testified that on March 5 he served the tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door of the rental unit.

The tenant testified that access to the building and to the rental unit is gained through the use of a hotel key card and that the key expired on March 1, which prevented him from accessing the rental unit via the front door. Since March 1, he has been accessing the rental unit through the window. He stated that he did not receive the Notice until March 12. The tenant claimed that he telephoned the landlord on March 8 to advise that his girlfriend would pay rent that afternoon, but the landlord had stated that the office would not be open at the time the girlfriend proposed to come. The tenant alleged that the landlord illegally entered the unit on March 16 and did not ask for rent on that date, nor did he offer to reactivate the key card.

The landlord testified that the key card is activated at the computer in the office and testified that the tenant had not requested that the card be reactivated.

The landlord seeks an order of possession and a monetary order for \$550.00 in rental arrears, \$25.00 as a late payment fee for November pursuant to the terms of the

tenancy agreement, \$25.00 as a late payment fee for March and recovery of the \$50.00 filing fee paid to bring his application.

Analysis

Section 26(1) of the Act requires tenants to pay rent when it is due regardless of whether the landlord has complied with his obligations under the Act or tenancy agreement. I find that the tenant had an obligation to pay his rent on March 1 and failed to do so. I find that the landlord did not have an obligation to find the tenant and repeatedly request rent; nor did he have an obligation to bring the office computer to wherever the tenant was and offer to reactivate the key card.

I accept that the tenant did not receive the Notice until March 12 and find that he did not pay the rental arrears or dispute the Notice within 5 days of having received it, and is therefore conclusively presumed under section 46(5) to have accepted that the tenancy ended on the effective date of the Notice. I find that the landlord is entitled to an order of possession. The tenant must be served with the order and should he fail to comply, the order may be enforced through the Supreme Court.

I find that the landlord is entitled to recover the rental arrears, 2 late payment fees and the filing fee and I award him \$650.00. I grant the landlord a monetary order under section 67 for this sum which may be enforced in the Small Claims Division of the Provincial Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$650.00.

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 04, 2012

Residential Tenancy Branch