



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

An Agent for the Landlord appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord submitted evidence, in the form of a postal receipt, that the Tenant was served with the Notice of Hearing and Application by registered mail. Under the Act, registered mail is deemed served five days after sending. Despite this the Tenant did not appear at the hearing. I find the Tenant has been duly served under the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the testimony of the Agent, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on April 4, 2012, by posting on the door, which was witnessed.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The tenancy agreement between the parties allows the Landlord to charge a late payment fee of \$20.00 and an NSF fee of \$25.00.

The Agent testified that the Tenant abandoned the rental unit, although it is not clear when the Tenant left.

Analysis

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

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act 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 effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Tenant has also not paid rent for May 2012, and the Landlord will suffer a loss of rent for the month. Therefore, under section 64 of the Act I allow the Landlord's claim to be amended to include one additional month of rent.

I find that the Landlord has established a total monetary claim of **\$1,845.00**, comprised of rent of \$1,750.00 for April and May of 2012, a late payment fee of \$20.00 and an NSF fee of \$25.00, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of **\$437.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,407.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim and is granted a monetary order for the balance of rent and fees due.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 10, 2012.

Residential Tenancy Branch