



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on a 10 day Notice to End Tenancy for unpaid rent, a monetary order for unpaid rent and alleged damage to the rental unit, and an order to recover the filing fee for the Application.

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 testified he served the Tenant personally with the Application for Dispute Resolution and Notice of Hearing on July 26, 2012, although the Tenant did not appear. I find the Tenant has been duly served in accordance with the Act.

Preliminary Issue

The Landlord has claimed for damage to the rental unit. The Landlord was informed that the Tenant had until the end of the tenancy to make repairs to the rental unit. Furthermore, the Landlord had supplied no evidence regarding the damage. Therefore, I dismiss this part of the Landlord's claim with leave 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 monetary relief?

Background and Evidence

Based on the undisputed testimony of the Landlord, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of \$6,550.00 in rent on July 5, 2012, by posting it to the door (the "Notice"). Under the Act, the Notice is deemed served three days later.

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 by filing an Application for Dispute Resolution.

There is no evidence the Tenant filed an Application to dispute the Notice.

The Tenant also failed to pay August 2012 rent, according to the Landlord. The Landlord testified that the Tenant has not paid rent since December 1, 2011.

Analysis

Based on the above, the uncontradicted 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 also note that under section 26 of the Act, the Tenant must pay rent on the date it is due, unless the Tenant has some authority under the Act, such as an order from a Dispute Resolution Officer, allowing him not to pay rent. Here there is no evidence the Tenant had any authority under the Act to withhold rent.

Therefore, 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 August of 2012, and the Landlord will suffer a loss of rent for the month. Therefore, I allow the claim to be amended to include one additional month of rent.

Therefore, I find that the Landlord has established a total monetary claim of **\$7,300.00**, comprised of \$7,200.00 in rent for December 1, 2011 to August 1, 2012, and the \$100.00 fee paid by the Landlord for this application.

I grant the Landlord an order under section 67 for the balance due of **\$7,300.00**. 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 Tenant is not allowed to withhold rent, without an order or some other authority under the Act. The Tenant had no such authority to withhold rent.

The Landlord is granted an order of possession and a monetary order for the rent due.

This decision is final and binding on the parties, except as 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: August 20, 2012.

Residential Tenancy Branch