



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent and a monetary order for unpaid rent.

Only the Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent submitted documentary evidence that they received the Application and Notice of Hearing for service on the Tenant on September 20, 2012. An Agent for the Landlord served the Tenant in person with the Application and Notice of Hearing on September 21, 2012. The Agent who appeared at the hearing testified she witnessed this. Nevertheless, the Tenant did not appear at the hearing. I find the Tenant was duly served in accordance with 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 affirmed testimony of the Agent for the Landlord, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on August 21, 2012 (the "Notice").

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.

The Agent for the Landlord testified that the Tenant also did not pay rent for September or October of 2012.

The Agent for the Landlord testified that the tenancy agreement includes a clause providing for a late payment of rent fee of \$25.00. The Landlord submitted a copy of the agreement in evidence.

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 from the Notice, and the following two months, and did not apply to dispute the Notice. The Tenant 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 the Tenant was aware, under the terms of the Notice that if she failed to pay rent or dispute the Notice, that the Tenant was required to vacate the rental unit on August 31, 2012. I find the Tenant has failed to vacate the rental unit, and has stayed in the rental unit without paying rent. Therefore, I find the Landlord is entitled to rent for the months of September and October of 2012.

I allow the Application to be amended to include one additional month of rent, plus the late payment fee, pursuant to section 64 of the Act.

I also find that the Landlord is still holding the security deposit and has suffered a loss due to the breach of the Act and tenancy agreement by the Tenant. Under section 64 of the Act, I allow the Landlord to amend their claim to include a request to retain the security deposit. Furthermore, pursuant to section 72 of the Act, I allow the Landlord to retain the security deposit in partial satisfaction of the claim.

Therefore, I find that the Landlord has established a total monetary claim of \$2,975.00 comprised of three months of rent at \$950.00 per month, three late payment fees of \$25.00 each, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of \$475.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,500.00**.

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 owes the Landlord for three months of rent. 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 due of \$2,500.00.

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: October 23, 2012.

Residential Tenancy Branch