



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD, FF

Introduction

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

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on December 20, 2012, a Canada post tracking number was provided as evidence of service, and the tenant did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

Preliminary Issue

At the onset of the hearing of the hearing the landlord stated an order of possession is no longer required as the tenant vacated the rental unit on January 3, 2013.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on November 15, 2012. Rent in the amount of \$1,080.00 was payable on the first of each month. The landlord stated the cheque issued by the tenant for the security deposit was returned for insufficient funds, and as a result no security

deposit was paid. The tenancy ended on January 3, 2013. Filed in evidence is a copy of the tenancy agreement.

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for non-payment of rent. The tenant has not paid all 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, which was December 14, 2012. The tenant vacated the rental unit on January 3, 2013.

The landlord testified the rental unit was advertised immediately after the tenant vacated the unit, however, the unit has not been rented as of today's hearing due to short notice.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act by the tenant and a corresponding loss.

Section 26 of the Residential Tenancy Act states:

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The evidence of the landlord was the tenant did not pay any rent owed for December 2012 and did not pay any rent for January 2013. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and

this has caused losses to the landlord. The landlord advertised the rental unit immediately after the tenant vacated the unit, however, the rental unit has not been rented as of today's date. I find the landlord made reasonable efforts to mitigate the loss.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act.

I find the landlord has established a total monetary claim of **\$2,210.00** comprised of the unpaid rent owed for December 2012 and January 2013, and the \$50.00 fee paid by the landlord for this application. I grant the landlord a formal order under section 67 for the above amount.

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

Conclusion

The tenants failed to pay rent and did not file to dispute the Notice to End Tenancy, and vacated the rental unit. Therefore, an order of possession is not required.

The landlord is granted a monetary order for rent due.

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: January 21, 2013

Residential Tenancy Branch

