



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Beree Enterprises Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords' application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenants for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The parties agree that this fixed term tenancy of one year started on December 15, 2012. Rent for this unit is \$2,300.00 per month and is due on the first of each month. A written tenancy agreement has been provided by the landlord in evidence.

The landlord testifies that the tenants rent cheque for January was returned due to insufficient funds (NSF). The tenant (TD) wrote another cheque for the landlord however this was also uncleared at the tenants' bank. The landlord testifies that the tenant TD paid \$900.00 in cash towards Januarys rent with a promise to pay the rest however no other money was forthcoming. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 30, 2013 and stated that the tenants owe rent of \$1,400.00. This was served in person to the tenants on that day. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on February 09, 2013. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since the notice was served the tenants have also failed to pay rent for February, 2013 and no rent has yet been received for March which is due today.

The landlord seeks a Monetary Order to recover the outstanding rent plus rent for March and the \$100.00 filing fee paid for this proceeding. The landlord also seeks an Order of Possession to take effect as soon as possible.

The tenant Disputes the landlords claim for unpaid rent. The tenant agrees that both rent cheques provided to the landlord did not clear at the bank. The tenant testifies this occurred because the tenants' bank account had been closed. The tenant testifies that she had informed the landlord of this and paid the landlord \$900.00 in cash on January 25, 2013 for which the landlord provided a receipt and \$1,400.00 on January 27, 2013 which the landlord did not provide a receipt for. The tenant testifies that this sum was withdrawn from the tenants' bank on this date.

The tenant testifies that she informed the landlord that they would not pay Februarys rent until after this hearing had concluded.

The landlord disputes the tenants claim that \$1,400.00 was paid in cash. The landlord testifies that no further amount has been paid by the tenant. The landlord questions the tenant as to why, if the tenant had closed the bank account, did the tenant write two rent cheques on a bank account that had been closed.

The tenant responds that she had informed the landlord that the account had been closed.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to Section 26 of the *Residential Tenancy Act (Act)* which states:

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 tenant has argued that they paid the outstanding rent of \$1,400.00 for Januarys in cash and did not receive a rent receipt from the landlord. The landlord argues that this was not the case and only \$900.00 was paid for Januarys rent. The tenant has provided no evidence to support her claim, such as a bank statement showing that \$1,400.00 was withdrawn from her bank.

As there is no evidence to support the tenants claim that they paid the balance due for Januarys rent I find in favor of the landlords claim and award the landlord a Monetary Order for Januarys and Februarys rent to the amount of **\$3,700.00** pursuant to s.67 of the *Act*.

The landlord has also made a claim for March, 2013 rent; however I find the landlords claim is premature as the tenants still have the rest of today to pay rent for March. This section of the landlords claim is therefore dismissed with leave to reapply.

As the landlords have been partially successful in this matter, they are also entitled to recover the **\$100.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for the balance owing of **\$3,800.00**.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,800.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenants. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

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: March 01, 2013

Residential Tenancy Branch

