



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent, a monetary order for unpaid rent and utilities, and to recover the filing fee for the Application.

Only 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 Landlord testified that on May 6, 2013, she personally served the Tenant with the Notice of Hearing and the Application, and the Landlord's husband witnessed this. Despite this the Tenant did not appear at the hearing. I find the Tenant has been 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.

Preliminary Matter

During the course of the hearing, I allowed the Landlord to amend their claim to include a request to retain the security deposit, pursuant to section 64 of the Act.

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 Landlord and on documentary evidence submitted, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on April 24, 2013, by personal service (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 testimony of the Landlord was that the Tenant had not paid any rent after the Notice was served on her. There is also no evidence before me that the Tenant filed an Application to dispute the Notice.

The Landlord also requested a monetary order for unpaid utilities; however, no copies of the utility bills were provided 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 and did not apply to dispute the Notice. Because of this, the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, May 3, 2013. However, the Tenant has failed to vacate the rental unit.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay 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 Landlord is still holding the security deposit of \$600.00 and has suffered a loss due to the breach of 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.

I dismiss the claims of the Landlord for the utility bills, with leave to reapply.

This leads me to find that the Landlord has established a total monetary claim of **\$2,000.00** comprised of unpaid rents of \$375.00 for March, \$375.00 for April, and \$1,200.00 for May and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of **\$600.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,400.00**. This order must be served on the Tenant and 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 due. The Landlord may reapply for the amount owed on the utility bills.

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: May 31, 2013

Residential Tenancy Branch

