



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR, LRE, MNDC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The tenant applied for an order cancelling a notice to end tenancy; for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to suspend or set conditions on the landlord's right to enter the rental unit; and to recover the filing fee from the landlord for the cost of the application.

The landlord filed this application on June 11, 2013 and served the tenant by registered mail on June 13, 2013 with a copy of the application, Notice of Hearing documents and a copy of the evidence used in this hearing. The Canada Post tracking numbers were provided by the landlord during the hearing and based on this, I find the tenant is deemed to be served on the fifth day after they were mailed as per the *Residential Tenancy Act*.

The tenant made the application on June 3, 2013. However, the tenant did not appear or provide any evidence prior to this hearing despite being served notice of it in accordance with the *Act*. Based on this, I dismiss the tenant's application without leave to re-apply.

The landlord attended the hearing to give affirmed testimony and provided evidence in advance of the hearing, all of which was carefully considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord testified that the tenancy started on March 1, 2013 for a fixed term of 6 months. A written tenancy agreement was completed and rent in the amount of \$2,400.00 was payable by the tenant on the 1st day of each month. The landlord collected a security deposit from the tenant in the amount of \$1,200.00 on February 17, 2013 which the landlord still retains.

The landlord testified that the tenant failed to pay rent which was due on May 1, 2013 in the amount of \$2,400.00. As a result the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 30, 2013 by registered mail with an expected date of vacancy of June 10, 2013; this was provided as evidence for the hearing. The landlord further testified that since the time of issuing this notice and making the application, the tenant has also failed to pay for June, 2013 rent and still occupies the rental unit. As a result the landlord testified that he also claims loss of rent for June, 2013 in the amount of \$2,400.00.

As a result, the landlord seeks an Order of Possession for unpaid rent or utilities, and to recover the balance of \$4,800.00 in rent arrears.

Analysis

The *Residential Tenancy Act* states that documents served by registered mail are deemed to have been served five days after mailing. Therefore, I find that the tenant was deemed to have been served the notice to end tenancy on June 4, 2013, and as a result had until June 14, 2013 to vacate the rental unit.

Whilst the tenant did make an application within the allowable time limits to dispute the notice to end tenancy, the tenant failed to appear for the hearing or provide documentary evidence to support reasons as to why the rent was not paid. As a result, I accept the landlord's testimony that the tenant has not paid rent for the month of May, 2013 as per the notice to end tenancy and find that the landlord is entitled to an Order of Possession and a monetary order for May, 2013 rent.

I also find that the landlord is entitled to recover unpaid rent for June, 2013 in the amount of \$2,400.00 as the landlord has not received full possession of the rental unit from the tenant.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenant the \$50.00 filing fee for the cost of this application. Therefore, the total amount payable by the tenant to the landlord is \$4,850.00.

As the landlord already holds a \$1,200.00 security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the *Act*. As a result, the landlord is awarded \$3,650.00.

Conclusion

For the reasons set out above, I find the landlord is entitled to an Order of Possession effective **2 days after service on the tenant**. This order must be served on the tenant and may be filed and enforced in the Supreme Court as an order of that Court.

I find that the landlord is also entitled to monetary compensation pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$3,650.00**. 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.

The tenant's application is dismissed without leave to re-apply.

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: June 27, 2013

Residential Tenancy Branch

