



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. At the outset of the hearing the landlord withdraws all aspects of this claim with the exception of an Order of Possession for unpaid rent.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*. The landlord testifies that the tenant was served in person by the landlord on August 16, 2013.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

The landlord testifies that this tenancy was for the female tenant SS only. The male tenant AW named on this application was not named as a tenant on the tenancy

agreement and the landlord states that he is an occupant at the rental unit. As this party AW is not a tenant then any Orders will be made against the tenant SS only as an occupant has no rights or obligations under the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord testifies that this tenancy started on July 01, 2013 for a month to month tenancy. Rent for this unit is \$925.00 per month and is due on the 1st day of each month. The tenant failed to pay the required security deposit of \$400.00.

The landlord testifies that the tenant paid rent for July but failed to pay rent for August on the day it was due. The landlord issued a 10 Day Notice on August 01, 2013 and served this upon the tenant in person on August 02, 2013. This Notice informed the tenant that the tenant owes rent for August of \$925.00 and the tenant has five days to either pay the outstanding rent or file an application to dispute the Notice or the tenancy will end on August 11, 2013.

The landlord testifies that the tenant did not pay the rent within five days. However Welfare sent the landlord a cheque for the tenants rent for August on August 19, 2013. The landlord testifies that Welfare also paid the tenants rent for September. The landlord testifies that although there is now no outstanding rent as the tenant did not pay the rent within five days of receiving the 10 Day Notice the landlord seeks an Order of Possession and does not want to reinstate the tenancy.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me.

Section 26 of the Act 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.

At the time the landlord served the tenant with the 10 Day Notice to End Tenancy rent for August was outstanding. The tenant has remained living in the rental unit and did not pay the rent or dispute the Notice within the allowable five days as indicated on page two of the 10 Day Notice. The tenant is therefore conclusively presumed to have accepted the end of the tenancy.

The landlord is therefore entitled to an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenant. This order must be served on the Respondent 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: September 24, 2013

Residential Tenancy Branch

