



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MT, CNR,
For the landlord – OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for more time to file an application to cancel a Notice to End Tenancy and applied to cancel a 10 Day Notice to End Tenancy for unpaid rent. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; 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.

The hearing went ahead as scheduled however the tenant failed to dial into the hearing during the conference call. Therefore, no hearing took place regarding the tenant's application as the tenant has failed to present the merits of their application and the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on August 16, 2013. Mail receipt numbers were provided in the landlords' documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Are the landlords entitled to a Monetary Order to recover unpaid rent or utilities?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlords testify that this month to month tenancy started on September 01, 2008 although the tenant was allowed to move in earlier. Rent for this unit is \$800.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy.

The landlord (BS) testifies that the tenant failed to pay rent for June, July and August, 2013. The landlords issued two 10 Day Notices to End Tenancy for unpaid rent on July 26, 2013. These Notices were for unpaid rent for June and July, 2013 and were served in person to the tenant on July 26, 2013. The first Notice states the tenant owes \$800.00 in rent for June and the second Notice states the tenant owes rent of \$1,600.00 for June and July, 2013. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on August 06, 2013. The tenant did not pay the outstanding rent and although the tenant has disputed the Notices within five days, as the tenant filed an application on July 30, 2013, the tenant has not appeared at the hearing today to present the merits of their application. Since that time the tenant has not paid rent for August, 2012. The landlords served the tenant with a third 10 Day Notice on August 03, 2013 by leaving it in the tenant's mailbox. This Notice informs the tenant that there is now \$2,400.00 in outstanding in rent.

The landlords seek a Monetary Order to recover unpaid rent and have also applied for an Order of Possession to take effect as soon as possible.

The landlords' testify that the tenant has also failed to pay rent for September, 2013 of \$800.00. The landlords had filed a claim to recover a loss of income for September but now state this is outstanding rent as it was not paid on the first day of the month.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlords'.

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.*

Consequently I find that the tenant has failed to pay rent for June, July, August and September, 2013 and the landlord is entitled to recover these rent arrears to the sum of **\$3,200.00**. Consequently, the landlord will receive a monetary award for this amount pursuant to s.67 of the Act.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the Act.

The landlord will receive a Monetary Order for **\$3,250.00**

I accept that the tenant was served the 10 Day Notices to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notices state that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notices are deemed to have been received by the tenant on July 26, 2013 and

August 6, 2013 (three days after being left in the mailbox). I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that 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 and grant the landlords an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$3,250.00**. The order must be served on the respondent 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 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.

The tenant's application is dismissed without leave to reapply.

As the applicant did not appear at the hearing today; I Order that the applicant pay the filing fee of **\$50.00** that was previously waived to the director of the Residential Tenancy Office.

Dated: September 10, 2013

Residential Tenancy Branch

