



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant (SM).

The landlord's application is seeking orders as follows:

1. For an order of possession for unpaid rent;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel an notice to end tenancy for unpaid rent;
2. For a monetary order for emergency repairs;
3. For a monetary order for money owed or compensation; and
4. To have the landlord make emergency repairs and make repairs to the unit.

Preliminary Issues

The first issue that I must decide is whether the Act has jurisdiction over the application filed by (SM) or the landlord's application filed against the respondent (SM), in order to proceed.

The landlord stated that the respondent (SM) is not a tenant as she was not added to the tenancy agreement. The landlord stated that he was not prepared to have (SM) as a tenant and that she is merely an occupant. Filed in evidence is a portion of the tenancy agreement.

The respondent (SM) agreed that she was not added to the tenancy agreement as a tenant. The respondent stated she paid cash directly to the tenant (DR) for her portion of rent.

Section 13 of the Residential Tenancy Policy Guidelines states:

Where a tenant allows a person who is not a tenant to move into the premises and share rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

In this case, the applicant/respondent (SM) was not added to the tenancy agreement as a tenant. Therefore, I find the applicant/respondent is not a tenant as defined under the guideline. Rather, I find the applicant/respondent (SM) is an occupant and has no legal rights under the *Residential Tenancy Act*.

As this is a dispute between a landlord and an occupant and not a dispute between a landlord and tenant, I find that there is no jurisdiction for the applicant (SM) to proceed with their application. I dismiss the application without leave to reapply.

Further, I also find there is no jurisdiction for the landlord to make a claim against the occupant (SM). Therefore, I dismiss the application against the occupant (SM).

This hearing proceeded against the tenant (DR) listed in the landlord's application and listed on the tenancy agreement.

The landlord attended the hearing. As the tenant (DR) did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on August 16, 2013, to the tenant. The occupant (SM) indicated that Canada post left a card for the tenant (DR), however, the tenant (DR) did not attend to pick up the card or the package.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant (DR) has been duly served in accordance with the Act.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on January 22, 2011. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant.

The landlord stated on August 1, 2013, the tenant was served with a notice to end tenancy for non-payment of rent by serving an adult person who normally resides in the unit, which the occupant (SM) confirmed it was received.

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.

The landlord stated he received \$300.00 cash in June 2013 and a further \$468.00 in cash in July 2013. The landlord stated these amounts were applied to June's outstanding rent and a balance of \$232.00 is still outstanding for June 2013, rent.

The landlord stated the tenant has not paid any rent for July, August and September 2013. The landlord stated the total balance owed in unpaid rent is \$3,232.00.

Analysis

Based on the above, the statement, 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 and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

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 has established a total monetary claim of **\$3,282.00** comprised of unpaid rent for June, July, August and September, 2013 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of \$500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,782.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The application filed by the occupant is dismissed without leave to reapply for lack of jurisdiction.

The application filed by the landlord against the occupant (SM) is dismissed without leave to reapply for lack of jurisdiction.

The tenant (DR) 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, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 16, 2013

Residential Tenancy Branch

