



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Agents for 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 Agents testified they served the Tenant with the Notice of Hearing and their Application by registered mail, sent on October 11, 2013. Under the Act, registered mail is deemed served five days after mailing. Despite this the Tenant did not appear at the hearing. I note that refusal or neglect to accept registered mail is not a ground for Review Consideration under the Act. 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.

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

This tenancy began in August of 2011, with the parties entering into a written tenancy agreement. The monthly rent was \$985.00, and the Tenant paid a security deposit of \$500.00. I note this exceeds the amount actually payable for a security deposit under the Act, nevertheless, it is accounted for below.

Based on the testimony of the Agent for the Landlord, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on September 22, 2013, by sending registered mail (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 Agent for the Landlord testified that all the rent for September, October and November been not been paid, but a partial payment of \$860.00 was made in November of 2013.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid all 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, which was October 5, 2013.

I note that 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 there is no evidence the Tenant had any 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 further find that the Landlord has established a total monetary claim of \$3,005.00, comprised of \$985.00 in rent for each month of September, October and November of 2013, and the \$50.00 fee paid by the Landlord for this application.

I offset that amount by the partial November payment of \$860.00, and I order that the Landlord retain the security deposit of \$500.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,645.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay all the rent due 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.

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: November 18, 2013

Residential Tenancy Branch

