



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPT, OPR, MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to applications made by both the landlord and tenant. The landlord applied for an Order of Possession and a Monetary Order for: unpaid rent or utilities; for damage to the unit site or property; to keep all or part of the pet damage or security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant applied to cancel the notice to end tenancy and for an Order of Possession of the rental unit.

The landlord appeared for the hearing with a witness who both provided affirmed testimony; the landlord also submitted documentary evidence prior to the hearing. The landlord served a copy of the application, the Notice of Hearing documents and a copy of the evidence used in this hearing personally to the tenant on November 20, 2013. The witness was present during the service and testified to this effect. Based on this, and in the absence of any evidence by the tenant to refute this, I find that the tenant was served the documents as required by the Residential Tenancy Act (referred to as the Act).

The tenant failed to appear for the hearing despite making her own application for which she was given the same date and time of this hearing. As a result, I dismiss the tenant's application without leave to re-apply.

At the start of the hearing the landlord withdrew the portion of his application for damage to the unit site or property as he did not know the extent of the damages caused by the tenant to date. As a result, I dismiss this portion of the landlord's application with leave to re-apply.

I have carefully reviewed the undisputed affirmed testimony of the landlord and the witness as well as the documentary evidence submitted prior to the hearing in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent for November and December, 2013?
- Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that the tenancy began on September 2, 2013 on a month to month basis. The tenant paid a security deposit of \$225.00 on September 2, 2013 which the landlord still retains. Currently, rent in the amount of \$1,500.00 is payable by the tenant on the first day of each month.

The landlord testified that the tenant failed to pay rent for the month of November, 2013. As a result, the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on November 5, 2013 with a witness. The notice was provided as evidence for the hearing along with a proof of service document verifying the service method used by the landlord. The notice shows an amount of \$1,500.00 for unpaid rent due on November 1, 2013 with an expected date of vacancy of November 15, 2013.

The landlord testified that the tenant has also failed to pay for December, 2013 rent in the amount of \$1,500.00. As a result, the landlord seeks to recover lost rent from the tenant for a total amount of \$3,000.00 and an Order of Possession.

Analysis

Section 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a tenant must pay the overdue rent or apply for dispute resolution; if the tenant fails to do either, then they are conclusively presumed to have accepted the notice to end tenancy and they must vacate the rental unit on the date to which the notice relates.

Having examined the notice to end tenancy, I find that the contents complied with the requirements of the Act. As a result, I accept that the tenant was personally served by the landlord with the notice to end tenancy on November 5, 2013.

As a result, the tenant had until November 10, 2013 to pay the overdue rent or apply to dispute the notice as required by the Act. However, the tenant did not apply for dispute resolution until November 14, 2013.

The tenant failed to appear for the hearing or provide sufficient reasons for applying outside of the allowable five day time limit and as a result, I find that the tenant is conclusively presumed to have accepted that the tenancy ended as per the notice, and therefore the landlord is entitled to an Order of Possession.

In relation to the monetary claim, I award the landlord the outstanding rent for November, 2013. Since the tenant is still occupying the rental suite and has not paid rent for December, 2013, I also award the landlord unpaid rent due for December, 2013. Therefore the landlord is awarded a total of \$3,000.00 in rent arrears.

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 his application pursuant to Section 72(2) (b) of the Act. Therefore, the total amount payable by the tenant to the landlord is \$3,050.00. As the landlord already holds \$225.00 in a security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the landlord is awarded \$2,825.00.

Conclusion

For the reasons set out above, I grant the landlord an Order of Possession effective **2 days after service on the tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$2,825.00**. This order must be served on the tenant and may then 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: December 12, 2013

Residential Tenancy Branch

