



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNR OPC OPR

Introduction

This hearing dealt with an application by the landlords for an order of possession and a monetary order for unpaid rent, unpaid utilities, and to recover the RTB filing fee.

One of the landlords participated in the teleconference hearing and gave affirmed evidence. The tenant did not attend. The landlord gave evidence that he served the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution on the tenant by registered mail on January 3, 2014. I find that the tenant was properly served.

Issue(s) to be Decided

Are the landlords entitled to an order of possession?
Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The landlord provided the tenancy agreement, which indicates that the tenancy started June 1, 2013 and the tenant is obligated to pay \$1,995.00 in rent in advance on the first day of the month. The tenant also paid a security deposit of \$997.50. It was a fixed-term tenancy for one year. The landlord gave evidence that the tenant had a fixed-term tenancy for the same rental unit for the previous year, and they "renewed" the tenancy in the current tenancy agreement.

The tenant's personal name is typed on the tenancy agreement, but her personal name is crossed out in pen and her business name is written in instead. The landlord's evidence is that he does not know whether the tenant's business is a sole proprietorship or a corporation. He said the rental unit was rented to the tenant primarily as a

residence. As well, the landlords inspected the rental unit during the tenancy and the rental unit appeared to be being used primarily as a residence.

The landlord gave evidence that his agent served the tenant with a Notice to End Tenancy for Cause (the "Cause Notice") on November 18, 2013 by posting the Cause Notice on the tenant's door. Section 90 of the Act provides that because the Cause Notice was served by posting it on the tenant's door, the tenant is deemed to have received the Cause Notice three days later on November 21, 2013. The Cause Notice specifies that the cause for ending the tenancy is "tenant is repeatedly late paying rent". The move-out date specified in the Cause Notice is December 31, 2013.

The landlord gave evidence that the tenant was frequently late paying rent during her previous tenancy, and they only "renewed" her tenancy because she promised she would pay her rent on time. The tenant paid rent by electronically transferring the funds to the landlord's bank account. The landlord's evidence is that the tenant has been late with her rent every month since the tenancy began. The rent was paid anywhere between 10 days late and a month and a half late.

The landlord gave evidence that his agent served the tenant with a Notice to End Tenancy for Unpaid Rent (the "Unpaid Rent Notice") on December 6, 2013 by posting the Unpaid Rent Notice on the tenant's door. Section 90 of the Act provides that because the Unpaid Rent Notice was served by posting it on the tenant's door, the tenant is deemed to have received the Unpaid Rent Notice three days later on December 9, 2013. The Unpaid Rent Notice specifies that \$1,995.00 was owed in unpaid rent that was due on December 1, 2013.

The landlord gave evidence that the tenant paid the \$1,995.00 that was owed for December 2013 rent by electronic transfer on December 31, 2013. The tenant has not paid rent for January 2014.

The landlord gave evidence that the tenant is responsible for reimbursing the landlord for hydro. He said he pays the hydro bills then emails them to the tenant, and the tenant is obligated to reimburse him promptly by electronic transfer of funds. He said the landlords emailed the tenant on December 15, 2013 with a copy of the hydro invoice for the period October 3, 2013 to December 3, 2013 showing an amount due of \$149.96. The tenant has not made payment to the landlord.

Analysis

I find that the rental unit was rented as a residence and was primarily used as a residence. For that reason, I find that the property was not “living accommodation included with premises that are primarily occupied for business purposes and are rented under a single agreement” and Section 4(d) does not apply. For the same reason, I find that the tenancy agreement is not a commercial tenancy. Accordingly, the Act applies to this tenancy and I may decide this application.

I find that the tenant received the Cause Notice on November 21, 2013. The tenant did not dispute the Cause Notice within 10 days after receiving it. She is therefore conclusively presumed to accept that the tenancy ended on December 31, 2013.

In any case, I accept the landlord’s undisputed evidence that the tenant was late paying her rent in each of the eight consecutive months since the beginning of the current tenancy agreement. For that reason, I find that the landlord has proven the cause “tenant is repeatedly late paying rent”. I grant the landlord an order of possession which must be served on the tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I find that the tenant received the Unpaid Rent Notice on December 9, 2013. The tenant did not dispute the Unpaid Rent Notice or pay the overdue rent within five days of receiving the Unpaid Rent Notice. She is therefore conclusively presumed to accept that the tenancy ended on the effective date of the Unpaid Rent Notice. The Unpaid Rent Notice specifies a move-out date of December 16, 2013 however this is not 10 days from the date of deemed receipt of the Unpaid Rent Notice. Pursuant to Section 53, the effective date for the end of tenancy specified on the Unpaid Rent Notice is deemed to be December 19, 2013.

The Unpaid Rent Notice is effective in ending the tenancy on an earlier date than the Cause Notice. I therefore find that the tenancy ended on December 19, 2013. I further find that the tenant is an overholding tenant within the meaning of Section 57 since December 19, 2013.

The tenant paid \$1,995.00 on December 31, 2013 and I find that that payment satisfies any claim of the landlords’ for rent or compensation related to December 2013. I find the landlords are entitled to compensation, pursuant to Section 57, for the period of time that the tenant has occupied the rental unit in January 2014. I set the amount of compensation at \$1,995.00. The landlords also seek compensation for February 2014, however they have not yet established a claim for compensation for February 2014

since the tenant may move out before that time. Accordingly, the landlords' claim for compensation for February 2014 is dismissed with leave to reapply.

I accept the landlord's evidence that the tenant was obligated to reimburse the landlords for hydro, and that the tenant failed to pay the sum of \$149.96. The landlord is entitled to a monetary order for this amount. The landlord is also entitled to be reimbursed for the RTB filing fee of \$50.00.

The total monetary amount due to the landlord is \$2,194.96, and I grant a monetary order under Section 67 for that amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession and a monetary order of \$2,194.96.

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: January 29, 2014

Residential Tenancy Branch