



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Lite Car Service Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; 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.

At the outset of the hearing the landlord withdrew his application for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89(2) of the *Act*; the landlord's agent gave sworn testimony that the hearing documents were posted to the tenant's door on January 23, 2014.

The landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?

Background and Evidence

The landlord's agent testifies that this month to month tenancy started on March 01, 2012. Rent for this unit was \$475.00 per month and is due on the first of each month.

The landlord's agent testifies that the tenant wrote to the landlord's bookkeeper on December 13, 2013. This letter informs the landlord that the tenant had not given Disability enough notice to stop his rent payments from being sent to the landlord for January's rent. The tenant indicated that he was moving out at the end of December, 2013. The tenant asked the landlord to cash the rent cheque for January's rent from

Disability and give the money to the tenant as the tenant needed the money to move. The landlord testifies that he contacted the Disability payment department and was told not to cash the tenants rent cheque but rather to return the cheque to them once the landlord received it. The landlord testifies that he complied with this instruction and returned the cheque to Disability. However the tenant failed to move out at the end of December, 2013 and continues to live in the rental unit.

The landlord testifies that the tenant has not paid rent for January, 2014. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 08, 2014. This was posted on the tenant's door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent of \$475.00, apply for Dispute Resolution or the tenancy would end on January 18, 2014. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has failed to pay rent for February. The total amount of unpaid rent is now \$950.00.

The landlord seeks an Order of Possession to take effect as soon as possible.

Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I am satisfied that there is outstanding rent for January and February, 2014.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door it was deemed served three days after posting on January 11, 2014. The effective date of the Notice is therefore amended to January 21, 2014 pursuant to s. 53 of the Act. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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. As this date has since passed I grant the landlord an Order of Possession for two days after service upon the tenants pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord 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.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding. A copy of the landlord's decision will be accompanied by a Monetary Order for \$50.00. The Order must be served on the

respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

The landlord is at liberty to file a new application for unpaid rent and to keep the security deposit.

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: February 12, 2014

Residential Tenancy Branch

