



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prospero International Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – MT, CNR, RR

For the landlord – OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for more time to file an application to cancel a Notice to End Tenancy; to cancel a 10 Day Notice to End Tenancy for unpaid rent; for an Order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided. The landlord applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application. At the outset of the hearing the landlord's agents withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (*Act*), regulations or tenancy agreement.

The hearing went ahead as scheduled however the tenant failed to dial into the conference call during call. Therefore, no hearing took place regarding the tenant's application as the tenant has failed to present the merits of their application and the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, and served in person to the tenant on January 09, 2014. The agents for the landlord appeared, gave sworn testimony, were provided

the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

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

Background and Evidence

The landlord's agents testify that this month to month tenancy started on March 01, 2004. Rent for this unit is \$910.00 per month and is due on the 1st of each month.

The landlord's agents testify that the tenant failed to pay rent for January, 2014 of \$910.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 02, 2014 and this was served upon the tenant in person on this date. This Notice states that the tenant owes rent for January of \$910.00. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on January 12, 2014. The tenant did not pay the outstanding rent and although the tenant did file an application to dispute the Notice the tenant has failed to attend the hearing to present the merits of her application. Since the 10 Day Notice was issued the tenant has also failed to pay rent for February, 2014 of \$910.00. The total amount of outstanding rent is now \$1,820.00.

The landlord has applied for an Order of Possession to take effect as soon as possible and a Monetary Order to recover the rent arrears and filing fee.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agents.

Section 26 of the *Act* states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied from the evidence before me that the tenant has failed to pay rent for January and February, 2014 to an amount of \$1,820.00. Consequently, I find that the landlord has established their claim for a Monetary Order to recover the rent arrears of **\$1,820.00** pursuant to s. 67 of the *Act*.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

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. The notice is deemed to have been received by the tenant on January 02, 2014. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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 that date has since passed I grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,870.00** comprised of rent arrears and the filing fee. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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.

The tenant's application is dismissed without leave to reapply.

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 19, 2014

Residential Tenancy Branch

