



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for an order of possession based on a 10 day Notice to End Tenancy for unpaid rent and a one month Notice to End Tenancy for cause, a monetary order for unpaid rent, and to recover the filing fee for the Application.

Only the Landlords 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 Landlords testified they served the Tenant in person with the Notice of Hearing and the Application for Dispute Resolution on February 7, 2014. On or about February 17, 2014, the hearing date was re-scheduled and the Landlords received notice of this. They called the Tenant and informed her that the hearing date had been changed to one day earlier and that they had a new Notice of Hearing to serve on the Tenant. The Tenant acknowledged she understood the hearing date had changed and informed the Landlords she would pick up the new Notice of Hearing from them. However, the Tenant did not do this and instead appears to have moved out of the rental unit without returning the key to the Landlords. Under section 71 of the Act, I find that in these circumstances the Tenant has been sufficiently served.

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 Landlords to an order of possession and monetary relief?

Background and Evidence

Based on the affirmed testimony of the Landlords, I find that the Tenant was served with a one month Notice to End Tenancy for cause, on November 23, 2013, with an effective end date to the tenancy of December 31, 2013 (the "Cause Notice").

The Landlords further testified they served a 10 day Notice to End Tenancy for non-payment of rent on January 19, 2014, by posting this notice to the door of the rental unit (the "Unpaid Rent Notice").

The Unpaid Rent Notice informed the Tenant that it would be cancelled if the rent was paid within five days. The Unpaid Rent Notice also explains the Tenant had five days to dispute it by filing an Application for Dispute Resolution.

The Landlords testified that the monthly rent is \$550.00, payable on the first day of the month. The Landlords testified that the Tenant did not pay rent in December of 2013, paid only \$100.00 in January of 2014, and has paid no rent for February of 2014.

The Landlords further testified that they had not been served with any documents indicating the Tenant had applied for Dispute Resolution to dispute either the Cause Notice or the Unpaid Rent Notice.

Analysis

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

The Tenant has not paid the outstanding rent and did not apply to dispute either the Cause Notice or the Unpaid Rent Notice, and is therefore conclusively presumed under sections 46(5) and 47(5) of the Act to have accepted that the tenancy ended on the effective dates of those notices. As the Unpaid Rent Notice was served last, in this circumstance, I find that the tenancy ended in accordance with that notice. I do not need to deal with the Cause Notice here, as the tenancy is ending due to unpaid rent.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlords were 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 the Tenant had no authority under the Act to not pay rent.

I find that the Landlords are 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 find that the Tenant has not paid rent for February, after the Unpaid Rent Notice was served on her in January, and the Landlords will suffer a loss of rent for the month of February. Therefore, I allow the claim to be amended to include one additional month of rent for February 2014.

I find that the Landlords have established a total monetary claim of **\$1,600.00**, comprised of rents of \$550.00 for December 2013, \$450.00 for January and \$550.00 for February of 2014, and the \$50.00 fee paid by the Landlord for this application.

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 rent and did not file to dispute either 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 for unpaid rent.

The Landlords are granted an order of possession and a monetary order for the balance of rents 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: February 25, 2014

Residential Tenancy Branch

