



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent or utilities. The Landlord also applied for money owed or compensation for loss under the *Residential Tenancy Act* (the “Act”), and to recover the filing fee from the Tenant for the cost of the application.

An agent for the Landlord appeared for the hearing and provided affirmed testimony during the hearing as well as documentary evidence prior to the hearing. The Landlord’s agent was also permitted, under Section 11.5 of the Rules of Procedure, to provide rent payment receipts after the hearing.

The Landlord’s agent testified and provided a Proof of Service document signed by the Tenant and the Landlord’s witness showing the Tenant had received a copy of the Application and Notice of the Hearing documents personally on January 22, 2014. Based on this evidence, I find that the Tenant was served the hearing documents in accordance with Section 89(1) (a) of the Act. There was no appearance by the Tenant or submission of any evidence prior to the hearing despite the Tenant being served with the Notice of Hearing documents in accordance with the Act.

Issue(s) to be Decided

- Has the Landlord re-instated the tenancy?
- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for outstanding rent and late fees?

Background and Evidence

The Landlord’s agent testified that the tenancy began on March 1, 2013 for a fixed term of six months after which the tenancy continued on a month to month basis. Rent was

payable by the Tenant on the first day of each month in the amount of \$725.00. A written tenancy agreement, provided as evidence, was completed and signed by the Landlord and Tenant which indicates that the Tenant is liable to pay a \$20.00 late fee for late payment of rent. The Landlord collected a security deposit from the Tenant in the amount of \$362.50 on March 15, 2013.

The Landlord's agent testified that the Tenant had not paid rent for January, 2014 in the amount of \$725.00 and as a result, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 2, 2014 with an expected date of vacancy of January 15, 2014. The Notice was provided as evidence.

The Landlord, at the time of making the Application, was also seeking anticipated unpaid rent for the months of February and March, 2014. The Landlord's claim at the time of making the application was \$2,435.00 which comprised of unpaid rent, late rent fees and unpaid rent for a car parking space which was part of the tenancy agreement.

However, the Landlord's agent testified that the tenant had made a number of payments after the effective date of the Notice. The Landlord's agent testified that the Tenant had been informed that the tenancy was not going to be re-instated as a result of these payments being made and that the Landlord was still going to appear for the hearing to obtain an Order of Possession.

The Tenant was issued with a number of receipts showing that the Tenant's payments were being accepted for use and occupancy only. The Landlord's agent testified that the Tenant now owes a balance of \$275.00 for March, 2014 rent and two \$20.00 late rent payment fees for a total of \$315.00 which the Landlord now seeks as a Monetary Order.

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 make an Application to dispute the Notice; if the Tenant fails to do either, then they are conclusively presumed to have accepted the end of the tenancy and they must vacate the rental unit on the effective date of the Notice.

The Tenant failed to appear for the hearing or provide any evidence prior to the hearing, and as a result, I make the following determination based on the Landlord's Agent's undisputed testimony and documentary evidence.

Section 90(c) of the Act states that a document served by attaching it to the door is deemed to have been received 3 days after it is attached. Therefore, I find the Tenant

was deemed served with the Notice, which complied with the Act, on January 5, 2014. As a result, the Tenant had until January 10, 2014 to pay the overdue rent or apply to dispute the Notice, neither of which the Tenant did. As a result, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date on the Notice.

I also find that, based on the Landlord's Agent's testimony and the 'use and occupancy' receipts provided as evidence, the Tenant had been informed that the tenancy was not going to be re-instated even though partial rent payments were accepted by the Landlord after the effective date of vacancy on the Notice. As a result, the Landlord is entitled to an Order of Possession and a Monetary Order for the amount of outstanding rent which I accept the Tenant currently owes to the Landlord in the amount of \$315.00.

As the landlord had to make the Application to obtain an Order of Possession and has been successful in doing so, I award the Landlord \$50.00 for the cost of making the Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$365.00.

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 *Residential Tenancy Act* in the amount of **\$365.00**. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

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: March 10, 2014

Residential Tenancy Branch

