



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent or utilities, and to recover the filing fee from the Tenant for the cost of this application.

The Landlord and Tenant appeared for the hearing and provided affirmed testimony during the hearing. No issues in relation to the service of the hearing documents by the Landlord to the Tenant, who served them by registered mail, were raised by the parties. The Tenant also confirmed receipt of the Landlord's documentary evidence submitted prior to the hearing in accordance with the Rules of Procedure.

At the start of the hearing, I allowed the Landlord to amend the application pursuant to section 64(3) (c) of the Act, to include the company name which was originally documented on the application but had been deleted due to a miscommunication with the Residential Tenancy Branch.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to unpaid rent in the amount of \$1,450.00?

Background and Evidence

Both parties agreed that this tenancy started on March 30, 2007 on a month to month basis. The Tenant and previous Landlord completed a written tenancy agreement and the Tenant paid a \$350.00 security deposit at the start of the tenancy. Currently, the Tenant pays rent in the amount of \$800.00 which is payable on the first day of each month.

The Landlord testified that the Tenant had habitually paid his rent late throughout the tenancy and had been previously issued with 45 notices to end tenancy for unpaid rent. The Landlord testified that the Tenant had been served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), on January 3, 2014 by attaching it to the Tenant's door. The Notice was provided as evidence and shows an expected date of vacancy of January 13, 2014, due to \$2,290.00 of unpaid rent which had accumulated throughout the tenancy and was due on January 1, 2014.

The Landlord testified that the Tenant had paid only \$820.00 of this amount by the effective date on the Notice and was issued with a receipt for this payment which documented that fact that the payment was being accepted for "use and occupancy only of premises, the eviction notice is still standing." The Landlord testified that the amount he is now seeking as a Monetary Order is \$1,450.00

The Tenant testified that he had received the Notice on January 3, 2014 and that he was indeed in rental arrears for the amount testified to by the Landlord. However, the Tenant testified that when he was given the Notice he was confused as to what this amount related to as he was unclear on how much rent he owed. The Tenant testified that as a result of the Landlord submitting evidence to show the payments that the Tenant had made since the start of the tenancy, he was able to see clearly how this amount was reached by the Landlord and that he was now willing to pay this amount.

However, the Landlord indicated that he is not willing to continue the tenancy and now seeks an Order of Possession for the rental suite based on this unpaid rent.

Analysis

Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act.

Section 46(4) and (5) of the Act states that within five days of a Tenant receiving a Notice, the Tenant must pay the overdue rent or apply for dispute resolution; if the Tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

The Tenant confirmed receipt of the Notice on January 3, 2014 on his door and had until January 8, 2014 to pay **all** the overdue rent or apply to dispute the Notice as required by the Act and the instructions given to the Tenant on the Notice. However, the Tenant did neither.

As a result, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and therefore, the Landlord is entitled to an Order of Possession and a Monetary Order.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for the cost of this application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,500.00.

The Landlord did not make an application to keep the Tenant's security deposit. As a result, the rights and obligations in relation to the return of the Tenant's security deposit in accordance with the Act still apply.

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 if the Tenant fails to vacate the rental unit.

I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$1,500.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment.

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 20, 2014

Residential Tenancy Branch