



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CREIGHTON AND ASSOCIATES REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, 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 to keep the Tenant’s security deposit and to recover the filing fee 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 testified that the Tenant was served with a copy of the Application and Notice of the Hearing documents by registered mail on January 23, 2014. The Landlord provided the Canada Post tracking number and mailing receipt as evidence for this method of service. Section 90(c) of the *Residential Tenancy Act* (the “Act”) states that a document served by mail is deemed to have been received five days after it is mailed. As a result, I find that the Landlord served the hearing documents to the Tenant pursuant to section 89(1) (c) of the Act and that the Tenant is deemed served the documents on January 28, 2014.

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.

At the start of the hearing the Landlord testified that the Tenant had paid all the outstanding rent and only sought the Order of Possession and the recovery of the filing fee. The Landlord’s agent was also permitted, under Section 11.5 of the Rules of

Procedure, to provide rent payment receipts for the hearing which were issued to the Tenant after the notice to end tenancy was served.

Issue(s) to be Decided

- Has the Landlord re-instated the tenancy?
- Is the Landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The Landlord's agent testified that the tenancy began on April 1, 1993 for a fixed term of one year after which the tenancy continued on a month to month basis. Rent is currently payable by the Tenant on the first day of each month in the amount of \$950.00. A written tenancy agreement, provided as evidence, was completed and signed by the Landlord and Tenant. The Landlord collected a security deposit from the Tenant in the amount of \$310.00 at the start of the tenancy.

The Landlord's agent testified that the Tenant had not paid full rent for January, 2014 leaving an outstanding balance of \$350.00. As a result, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 6, 2014 by attaching it to the Tenant's door. The Notice, which was provided as evidence, shows an expected date of vacancy of January 16, 2014.

The Tenant made a number of rent payments, one of which was before the effective end date of the tenancy on the Notice and the other rent payments were made after the effective date of vacancy. The Landlord's Agent testified that the Tenant had also failed to pay for full rent on time for the months of February and March, 2014 (during the waiting time for this hearing) but had made a number of payments to pay all of the outstanding rent to date. As a result, the Landlord does not seek a Monetary Order for unpaid rent.

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 rent payments made after the effective date of vacancy on the Notice were being accepted for use and occupancy only.

Analysis

Section 46(4) and (5) of the Act states that within five days of a Tenant receiving a Notice, a Tenant must pay **all** 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 9, 2014. As a result, the Tenant had until January 14, 2014 to pay **all** 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 ten days later after being deemed to have received 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, I find that the Landlord is entitled to an Order of Possession.

As the landlord had to make the Application to obtain an Order of Possession and has been successful in doing so, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for the cost of the application.

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.

Pursuant to Section 72(b) (b) of the Act, I authorize the landlord to deduct \$50.00 from the Tenant's security deposit which the Landlord still retains. However, the Landlord and Tenant are cautioned that the rights and obligations relating to the remainder of the Tenant's security deposit are still in effect.

The remainder of the Tenant's application for unpaid rent and to keep the Tenant's security deposit is dismissed with leave to re-apply.

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 12, 2014

Residential Tenancy Branch

