



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bidwell Projects Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNR

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent and for a Monetary Order for unpaid rent.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on February 20, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. 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 testifies that this fixed term tenancy for a year started on July 01, 2013. Rent for this unit is \$950.00 per month. Rent is due on the first of each month.

The landlord testifies that the tenant has failed to pay all the rent each month since the August, 2013. The tenant now owes rent of \$2,665.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 09, 2014. This Notice was posted to the tenant's door. This Notice states that the tenant owes rent of \$1,290.00 that was due on January 01, 2014. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on January 19, 2014. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has also failed to pay all the rent for February leaving an unpaid balance of \$475.00 and no rent has been paid for March, 2014 of \$950.00. The landlord requests to amend the application to include the unpaid rent for March, 2014 as the tenant has continued to reside in the rental unit. The landlord seeks a Monetary Order to recover unpaid rent of \$2,665.00.

The landlord testifies that the tenant gave the landlord a rent cheque in September, 2013 which was returned due to insufficient funds (NSF). The landlord refers to the addendum for the tenancy agreement in which it states that a tenant will be charged \$50.00 for NSF cheques. The landlord seeks to recover this fee from the tenant.

The landlord has also applied for an Order of Possession to take effect within two days of service. The landlord has provided a detailed rent ledger, a copy of the 10 Day Notice and a copy of the tenancy agreement in documentary evidence.

Analysis

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.

Consequently I am satisfied with the undisputed evidence before me that the tenant has failed to pay rent for to an amount of \$2,665.00. I will allow the landlord to amend the application to include unpaid rent for March as the tenant has continued to reside in the rental unit and would be aware that rent was due for March. The landlord is entitled to a Monetary Order to the sum of **\$2,665.00** pursuant to s.67 of the *Act*.

I further find that the tenancy agreement addendum does contain a clause that notifies the tenant that the landlord will charge an NSF fee of \$50.00. However s. 7(d) of the *Residential Tenancy Regulation* allows a landlord to charge a fee of no more than \$25.00 for the return of a tenant's cheque by a financial institution which is documented in a tenancy agreement. As a result I find that the landlord is entitled to a fee of **\$25.00**.

I have reviewed all documentary evidence and accept that the tenant has been served with Notice to End Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenant on January 12, 2014.

Consequently the effective date of the Notice is amended to January 22, 2014 pursuant to s. 53 of the *Act*. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor did the tenant apply to dispute the Notice to End Tenancy within five days.

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 and grant the landlord an order of possession pursuant to section 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 **\$2,690.00**. 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 landlords 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.

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

