



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, MNDC, ERP, FF

For the landlord – OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for unpaid rent, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to make emergency repairs for health or safety reasons; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application. At the outset of the hearing the landlord's agent withdraws their application for a Monetary Order for money owed or compensation for damage or loss.

The hearing went ahead as scheduled however the tenant failed to dial into the conference call during call. Therefore, no hearing took place regarding the tenant's application as the tenant has failed to present the merits of their application. Consequently the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 28, 2014. Mail receipt numbers were provided by the landlord's agent in 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*.

An agent for the landlord appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. 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's agents testify that this tenancy started on July 12, 2011. The tenant rents the entire house and sublets rooms to other occupants. Rent for this unit is \$2,800.00 per month. Rent is due on the first day of each month. The tenant paid a security deposit of \$1,400.00 on July 12, 2011.

The landlord's agent testifies that the tenant failed to pay the rent due for September, 2013 leaving rent arrears of \$2,800.00. The tenant failed to pay rent for January, 2014 of \$2,800.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 25, 2014 and this was served upon the tenant by posting it to the tenant's door on this date. This Notice was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on February 04, 2014. The tenant did not pay the outstanding rent and although the tenant did file an application to dispute the Notice the tenant has not appeared at the hearing today. Since the 10 Day Notice was issued to the tenant the other occupants have paid rent directly to the landlord for February for their share of the rent. This left an outstanding balance of rent for February of \$300.00. Rent for March was also paid. There were rent arrears of \$5,900.00 due for September, 2013, January, 2014 and February, 2014. The tenant did deposit \$3,000.00 into the landlord's bank on March 03, 2014. This leaves an outstanding balance of rent owed of \$2,900.00. The landlords agent testifies that the tenant was informed that unless all the

rent arrears were paid prior to this hearing date then the landlord was going to follow through with the hearing and seek an eviction Notice. The landlord's agent testifies that the tenant was informed that unless this happened the landlord was not going to reinstate the tenancy.

The landlord seeks a reduced Monetary Order for \$2,900.00, an Order to recover the filing fee of \$100.00 and an Order of Possession effective as soon as possible.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent.

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.*

I am satisfied with the evidence before me that the tenant has rent arrears of \$2,900.00. Consequently, I find that the landlord is entitled to recover these rent arrears pursuant to s. 26 of the Act.

As the landlord has been successful in this matter, the landlord is also entitled to recover the \$100.00 filing fee for this proceeding pursuant to s. 72(1) of the Act.

The landlord will receive a Monetary Order for **\$3,000.00** pursuant to s. 67 and 72(1) of the Act.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been received by the tenant on January 28, 2014 and the

effective date of the notice is amended to February 07, 2014 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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. As that date has since passed I grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,000.00**. 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 landlord effective **Two (2) days after service upon 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.

The landlord is at liberty to enter into a new tenancy agreement with the other occupants of the rental unit.

The tenant's application is dismissed in its entirety without leave to reapply.

Dated: March 13, 2014

Residential Tenancy Branch

