



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 originally dealt with by way of a Direct Request Proceeding (a non participatory hearing) in response to the Landlords' Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent or utilities made on February 18, 2014.

On February 20, 2014 an Interim decision was made which explained that the Landlord had not been successful in obtaining any orders because the documentary evidence supplied was incomplete for the requirements of the Direct Request Proceedings. However, it was determined that the required information, namely the amount of rent that was outstanding and the start date of the tenancy, could be obtained from both parties in a hearing and as a result, the Direct Request Proceedings were adjourned to this participatory hearing.

Both parties were sent the Notice of Hearing letters detailing the date and time of this hearing. However, only one of the Landlords appeared for the hearing and provided affirmed testimony. The Landlords' documentary evidence submitted for the Direct Request Proceedings were referred to during this hearing and in this decision.

At the start of the hearing, I allowed the Landlord to amend the Application to include a claim for March and April, 2014 rent which the Tenant had not paid and the recovery of the filing fee, pursuant to Section 64(3) (b) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for outstanding rent?

Background and Evidence

The Landlord testified that this tenancy started on July 3, 2012 on a month to month basis. A written tenancy agreement was signed by the Landlord and Tenant in which the Tenant agreed to pay rent, on time, to the Landlords in the amount of \$525.00 on the first day of each month. No security deposit was requested from the Tenant.

The Landlord testified that the Tenant had not paid outstanding rent for the month of December, 2013 in the amount of \$225.00 and did not pay any rent for the months of January and February, 2014 in the amount of \$525.00 each. As a result, by February 1, 2014 the Tenant was in rental arrears for the amount of \$1,275.00.

As a result, the Landlords served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by registered mail to the Tenant's address on February 5, 2014. The Canada Post tracking number was provided as evidence for this method of service and the Landlord testified that the Tenant failed to pick this up and it was returned undelivered. The Notice which was provided as evidence shows an expected date of vacancy of February 20, 2014 and the amount of rent outstanding was due on January 1, 2014; however, the Landlord testified that this was a clerical mistake on the Notice and the outstanding rent of \$1,275.00 was due on February 1, 2014.

The Landlord testified that the Tenant had made some payments towards rent but was still in rental arrears as of April 1, 2014 in the amount of \$925.00. The Landlord testified that the Tenant was informed that the payments would not re-instate the tenancy and that as there was still rent outstanding, the Landlords still sought to end the tenancy by appearing for this hearing. As a result, the Landlord seeks an Order of Possession and a Monetary Order in the amount of \$925.00 for unpaid rent.

Analysis

I have examined the Notice and I find that it was completed with the correct information on the approved form as required by Section 52 of the Act.

Section 90(a) of the Act states that a document served by registered mail is deemed to have been received five days after it is mailed. The Landlord provided documentary evidence to show that the Notice had been registered mailed to the Tenant on February 5, 2014. The Tenant had failed to pick the mailed Notice and I find that a party cannot avoid service of a document by refusing or delaying the picking up of mailed documents or use this as grounds for a Review application. This is the reason why the Act allows

for the deeming provisions. As a result, I find the Tenant was deemed to have received the Notice on February 10, 2014 pursuant to the deeming provisions of the Act.

Section 46(4) and (5) of the Act states that within five days of a Tenant receiving a Notice, 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 that the requirements of the above sections of the Act had been met by February 15, 2014. As a result, I accept the Landlord's undisputed testimony and documentary evidence and I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date on the Notice.

As a result, the Landlords are 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 Landlords in the amount of \$925.00. As the Landlords had to make the Application to obtain an Order of Possession and were successful in doing so, I award the Landlords \$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 Landlords is \$975.00.

Conclusion

For the reasons set out above, I grant the Landlords 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 Landlords a Monetary Order pursuant to Section 67 of the Act in the amount of **\$975.00**. 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: April 22, 2014

Residential Tenancy Branch

