



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 dealt with a landlord's application for an Order of Possession and a Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord testified that he send the hearing documents to the tenant via registered mail sent to the rental unit on February 20, 2014. The landlord confirmed that the tenant continues to reside at the rental unit. The landlord provided a copy of the registered mail envelope that was returned to sender as being "refused by addressee". Section 90 of the Act deems a party to have received documents five days after mailing so that a party cannot avoid service by refusing to accept or pick up their mail. Therefore, I found the tenant is deemed to have received the landlord's hearing documents and I continued to hear from the landlord without the tenant present.

The landlord requested that application be amended to include loss of rent for the months of March 2014 and April 2014 since the tenant still occupies the rental unit. I permitted the amendment as the tenant has benefited from continued occupation of the rental unit.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?

Background and Evidence

The parties entered into a verbal tenancy agreement in September 2012 requiring the tenant to pay rent of \$600.00 on the 1st day of every month. The landlord did not collect a security deposit.

Starting February 2013 the landlord began receiving \$400.00 of the monthly rent from income assistance and the tenant was supposed to pay off or work off the balance.

Starting in June 2013 payments of rent were deficient or non-existent. In recognition of the tenant's financial hardship, the landlord offered to reduce the rent to \$500.00 per month starting October 1, 2013 on a temporary basis. Again, rent payments were deficient and the last payment made was December 15, 2013 in the amount of \$400.00.

As of January 1, 2014 the tenant owed the landlord \$2,490.00 in rent. The landlord presented the tenant with his calculations and offered to waive \$1,600.00 of the arrears if the tenant would pay the balance of \$890.00 by the end of January 2014. The tenant did not make any payment and the landlord's offer no longer stands.

On January 27, 2014 the landlord issued a 10 Day notice to End Tenancy for Unpaid rent (the Notice) to the tenant and sent it to him via registered mail. The landlord provided a copy of the registered mail receipt as proof of service. The Notice indicates rent of \$2,490.00 was outstanding as of January 1, 2014 and has a stated effective date of February 11, 2014. The tenant did not pay the outstanding rent, did not file to dispute the Notice, and continues to occupy the rental unit.

The landlord requested an Order of Possession effective as soon as possible. The landlord is seeking recovery of: unpaid rent of \$2,990.00 including the month of February 2014; plus, loss of rent of \$1,000.00 for the months of March and April 2014; plus, late fees of \$150.00; and, the \$50.00 filing fee.

Documentary evidence provided by the included: a written submission and time line of events; the 10 Day Notice; and, the landlord's detailed calculation of unpaid rent.

Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right to withhold rent. Where a tenant does not pay rent that is due the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord sent a 10 Day Notice to End Tenancy to the tenant via registered mail on January 27, 2014. As the 10 Day Notice was mailed to the tenant it is deemed to be received five days later on February 1, 2014. Therefore, I find the stated effective date of February 11, 2014 complies with the requirements of the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on February 11, 2014 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the undisputed evidence before me, I accept that the tenant continues to occupy the rental unit and I find the landlord entitled to recover unpaid rent and loss of rent for the months up to and including April 2014. I further award the landlord the filing fee paid for this application.

I have denied the landlord's request for late fees as the parties did not execute a written tenancy agreement providing for the payment of late fees, as required under the Residential Tenancy Regulations.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: up to January 2014	\$ 2,490.00
Unpaid rent: February 2014	500.00
Loss of Rent: March 2014	500.00
Loss of Rent: April 2014	500.00
Filing fee	<u>50.00</u>
Monetary Order	\$ 4,040.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been provided a Order of Possession effective two (2) days after service upon the tenant. The landlord has been provided a Monetary Order in the amount of \$4,040.00 to serve and enforce as necessary.

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 09, 2014

Residential Tenancy Branch

