



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – OPR, MNR, FF
For the tenant – CNR, OLC

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. 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. The tenant applied to cancel the Notice to End Tenancy and for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*.

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*, served by registered mail on March 24, 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. 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 tenancy started on September 01, 2013. Rent for this unit is \$1,100.00 per month and was due on the 1st day of each month.

The landlord testifies that the tenant failed to pay the rent owed for February and March 2014 of \$2,200.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on March 05, 2014. The 10 Day Notice was posted to the tenant's door on March 05, 2014. 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 March 05, 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. The landlord testifies that the tenant has also failed to pay any rent for April, 2014 and the landlord seeks to amend their application to include the unpaid rent for April of \$1,100.00. The total amount of unpaid rent is now \$3,300.00.

The landlord has provided a copy of the tenancy agreement and a copy of the 10 Day Notice to End Tenancy in evidence.

Analysis

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

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 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 March 08, 2014 and the effective date of the notice is amended to March 18, 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*.

I further grant the landlord a Monetary Order for the unpaid rent of **\$3,300.00** pursuant to s. 67 of the *Act*. I have allowed the landlord to amend their application to include unpaid rent for April as the tenant has continued to reside in the rental unit past the effective date of the Notice and would be aware that rent must be paid on April 01, 2014.

As the landlord has been successful the landlord is also entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

Conclusion

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. If

the Respondent fails to comply with this Order the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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 **\$3,350.00** comprised of unpaid rent and filing fee. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

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

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 30, 2014

Residential Tenancy Branch

