



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant's security deposit and to recover the filing fee for the cost of making the Application.

The Landlord appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. The Landlord testified that she served the Tenant with a copy of the Application and the Notice of Hearing documents (the "hearing documents") by registered mail on April 9, 2014, pursuant to section 89(1) (c) of the Act. The Landlord provided a copy of the Canada Post tracking receipt as evidence for this method of service. The Landlord testified that two weeks after sending the hearing documents by registered mail, they were returned to her unclaimed. However, the Landlord ran into the Tenant and handed her the unclaimed package explaining that they were documents relating to this hearing.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail or use this as grounds for a review. As a result, based on the undisputed evidence of the Landlord in relation to the service of the hearing documents, I find that the Tenant was deemed served with the required documents on April 14, 2014 after they were mailed to the Tenant on April 9, 2014. Furthermore, I am satisfied that the Tenant had been made aware of this hearing through the personal receipt of the documents from the Landlord after they were served in accordance with the Act.

However, there was no appearance by the Tenant during the 13 minute duration of the hearing and there was no submission of written evidence by the Tenant prior to this hearing, despite being served notice of this hearing in accordance with the Act.

As a result, I have carefully considered the undisputed affirmed testimony and the documentary evidence of the Landlord in this decision as follows.

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 unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on February 1, 2013 on a month to month basis. A written tenancy agreement was signed and rent was established in the amount of \$755.00 payable by the Tenant on the first day of each month. The Tenant paid the Landlord \$377.50 as a security deposit at the start of the tenancy.

The Landlord testified that the rent was paid on behalf of the Tenant by two different third party agencies; the first agency paid \$405.00 and the second agency paid \$350.00.

The Landlord testified that she had failed to receive \$350.00 from the second agency on January 1, 2014 and explained that the Tenant had cancelled the payments coming from this agency. As a result, the Landlord issued the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by attaching it to the Tenant's door on January 21, 2014. The Landlord provided a Proof of Service document which was signed by a witness verifying this method of service of the Notice. The Notice was also provided as evidence for this hearing and shows an expected date of vacancy of January 31, 2014 due to \$350.00 in unpaid rent due on March 21, 2014.

The Landlord testified that the Tenant failed to make the outstanding payment on the Notice and failed to move out by the vacancy date on the Notice. The Landlord testified that the Tenant indicated that she would be vacating the rental suite and so the Landlord did not make an Application for an Order of Possession.

The Landlord testified that the Tenant continued to make these promises for the next two months and she continued to not receive any rent from the second agency for the months of February, March and April, 2014. As a result, the Landlord finally decided to take action against the Tenant and made the Application on April 9, 2014.

The Landlord submitted that she had made an error on her Application as she did not include outstanding rent for January, 2014 and only claimed for February, March and April, 2014 in the amount of \$1,050.00. The Landlord further testified that since making the Application, the Tenant has not paid the portion of May, 2014 rent either.

As a result, the Landlord claims for the unpaid portion of the rent in the amount of \$350.00 due each month for the months of January, February, March, April and May, 2014 for a total amount of \$1,750.00.

The Landlord provided rental receipts for the partial \$405.00 rent payments made to her by the first agency for the months of February, March, April and May, 2014. The receipts indicate that the rent was being accepted from the Tenant for 'use and occupancy only'.

Analysis

Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act. Sections 46(4) and (5) of the Act states that within five days of a Tenant receiving the 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 Notice and they must vacate the rental unit on the date to which the Notice relates.

The Tenant was served by the Landlord with the Notice on January 21, 2014 by attaching it to the Tenant's door. Section 90(c) of the Act explains that documents served by posting them to the door are deemed to have been received three days after being attached. Therefore, I find that the Tenant was deemed to be served with the Notice on January 24, 2014, and had until January 29, 2014 to pay the overdue rent or make an Application to dispute the Notice as required by the Act, neither of which the Tenant did.

I also find that the even though the Landlord continued to receive only partial rent payments from the first agency which were being automatically paid to the Landlord, after the effective date of the Notice, this did not re-instate the tenancy as the Tenant was issued receipts that the payments were being accepted for the use and occupancy only.

As a result, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and therefore, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant as the effective date of the Notice has now passed.

Based on the written and verbal evidence of the Landlord above and in the absence of any evidence from the Tenant to dispute this, I find that the Landlord is also entitled to a Monetary Order for unpaid rent.

In determining the amount to be awarded to the Tenant, I allowed the Tenant to amend her application to include the unclaimed rent for January, 2014 for which the Tenant had been give the Notice and for the amount of unpaid rent for May, 2014 which the Landlord testified was not paid after the Application was made. I amend the Tenant's Application with these amounts pursuant to section 64 of the Act.

As a result, I award the Landlord **\$1,750.00** of rent arrears, which comprised of the unpaid portion of rent in the amount of \$350.00 for the five months testified to by the Landlord.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** Application filing fee pursuant to section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,800.00. As the Landlord already holds the Tenant's \$377.50 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to section 38(4) (b) of the Act. As a result, the Landlord is awarded \$1,422.50.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **two 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 Landlord a Monetary Order pursuant to section 67 of the Residential Tenancy Act in the amount of **\$1,422.50**. 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 Act.

Dated: May 30, 2014

Residential Tenancy Branch

