



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 convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent or utilities, and to recover the filing fee from the Tenant 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 he served the Tenant with a copy of the Application, the Notice of Hearing documents and the written evidence by registered mail on April 15, 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. 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, I find that the Tenant was deemed served with the required documents on April 20, 2014.

There was no appearance for the Tenant during the 24 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 unpaid rent outstanding in April, 2014 and nonpayment of rent for May, 2014?

Background and Evidence

The Landlord testified that the month to month tenancy for the rental unit started ten years ago at which point a security deposit was taken from the renter and rent was established in the amount of \$900.00 payable on the first day of each month. The Landlord testified that approximately two years ago it came to his attention that the original person he had been renting the suite to was no longer residing in the suite and that the Tenant was living in the suite and began to pay the rent to the Landlord. The Landlord accepted rent from the Tenant and a tenancy was established and continued with the Tenant and the Landlord.

The Landlord testified that in April, 2013 the Tenant fell into rent arrears in the amount of \$3,300.00. The Tenant provided the Landlord with a promissory note which detailed that the Tenant would make the outstanding payment of \$3,300.00 by the end of May, 2013. The note which was provided as evidence for this hearing stated that if the Tenant failed to make this payment he would vacate the suite accordingly.

The Landlord testified that the Tenant failed to make the full payment as promised in the note by the end of May, 2013. The Landlord testified that during the interim time, the Tenant did make payments each month for rent but continued to always be in rent arrears until the Landlord had reached his limit and decided to take action. The Landlord testified that by April, 2014 the Tenant was in rent arrears in the amount of \$3,700.00.

On April 4, 2014, the Landlord served 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. A copy of the Notice was provided as evidence and shows an expected date of vacancy of April 14, 2014 due to \$3,700.00 in unpaid rent which was due on April 1, 2014. The Landlord further testified that in the interim time of making the Application, the Tenant has also failed to pay for May, 2014 rent in the amount of \$900.00. As a result, the Landlord now seeks to claim a total of \$4,600.00 in outstanding from the Tenant.

Analysis

Section 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. Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act.

The Tenant was served by the Landlord with the Notice on April 4, 2014, by attaching it to the Tenant's door. The Act states that documents served in this manner are deemed to have been received three days after being attached. Therefore, I find that the Tenant was deemed to be served on April 7, 2014, and had until April 17, 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. 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.

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 entitled to a Monetary Order in the amount of **\$4,600.00** comprising of unpaid rent that had accumulated until April, 2014 in the amount of \$3,700.00 as documented on the Notice, and unpaid rent in the amount of \$900.00 for May, 2014 as 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 \$4,650.00.

Conclusion

For the reasons set out above, I grant the Landlord 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 Landlord a Monetary Order pursuant to section 67 of the Residential Tenancy Act in the amount of **\$4,650.00**. 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 Act.

Dated: May 27, 2014

Residential Tenancy Branch

