



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened by way of a 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.

An agent for the Landlord and one of the Tenants appeared for the hearing and both parties gave affirmed testimony during the hearing. However, neither party provided written evidence prior to the hearing.

No issues in relation to the service of the Notice of Hearing documents and a copy of the Application were raised by the parties.

Issue(s) to be Decided

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

Background and Evidence

Both parties agreed that this tenancy started on August 20, 2011 on a month to month basis. The Landlord collected a security deposit from the Tenant on August 11, 2011 in the amount of \$550.00 and a written tenancy agreement was signed by both parties. Rent is payable by the Tenant in the amount of \$1,100.00 on the first day of each month.

The Landlord’s agent testified that the Tenant failed to pay rent in January, 2014 and as a result, the parties agreed that the Tenant had been served with a 10 Day Notice to

End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 24, 2014. The parties agreed that the Notice, which was not provided as evidence, had a vacancy date of February 3, 2014 due to \$1,775.00 which was due on January 1, 2014. The parties also confirmed that the Notice was signed and dated by the Landlord and that it included the rental unit address.

The Landlord's agent testified that the Tenant had made a number of partial payments in February, 2014 for which he was issued with cash receipts that stated the money was being accepted for use and occupancy only. However, the Tenant had failed to pay the full amount due on the Notice and also failed to pay rent during the time period of the Notice being issued to the Tenant and this hearing.

The Landlord's agent testified that the Tenant is in rent arrears for \$2,325.00 but was unable to determine how this amount was calculated and which months this related to.

The Tenant agreed with the Landlord's agent's testimony including the details on the documents the Landlord was referring to during the hearing. The Tenant stated that the amount in rent arrears proposed by the Landlord was probably correct but was not sure. The Tenant testified that he had not paid the full amount of rent on the Notice and had not made an Application to dispute the Notice. However, the Tenant was willing to work with the Landlord on a payment plan to pay the outstanding rent.

Analysis

Based on the undisputed testimony of the Landlord and Tenant, I find that the Landlord served the Tenant with the correct Notice as required by the Act.

I accept the undisputed evidence of both parties that the Tenants failed to dispute the Notice or pay the outstanding rent owed on the Notice within the 5 days afforded to the Tenants under Section 46(4) of the Act. Therefore, I find that the Tenants are conclusively presumed under Section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and the Landlord is entitled to an Order of Possession.

In relation to the Landlord's Application for a Monetary Order for the unpaid rent, I find that the Landlord failed to provide sufficient evidence for the exact amount that was outstanding and which months the Tenant had not paid rent and which months the Tenant had made the partial payments. Therefore, I dismiss this portion of the Landlord's Application with leave to re-apply.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord **effective 2 days after service on the Tenant**. This order is final and binding on the parties and may be enforced in the Supreme Court as an order of that court.

The Landlord's Application for unpaid rent is dismissed with leave to re-apply.

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: May 15, 2014

Residential Tenancy Branch

