



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD, FF
CNC, CNL, MT, RR

Introduction

This hearing was convened by way of conference call concerning an Application for Dispute Resolution (the “Application”) made by the Landlord and by the Tenant.

The Landlord applied for an Order of Possession and a Monetary Order for: unpaid rent or utilities; for damage to the rental unit; to keep the Tenant’s security and pet damage deposit; and to recover the filing fee.

The Tenant applied: to cancel the notice to end tenancy for cause and for Landlord’s use of the property; to allow the Tenant to reduce rent for repairs or services or facilities agreed upon but not provided; and for more time to cancel the notices to end tenancy.

The Landlord appeared for the hearing and provided affirmed testimony during the hearing as well as written evidence in advance of the hearing. The Landlord testified that the Tenant was served with a copy of the Application, the Notice of Hearing documents and the Landlord’s written evidence by registered mail on March 26, 2014. The Landlord provided a copy of the Canada Post tracking number as evidence for this method of service. Section 90(a) of the *Residential Tenancy Act* (the “Act”) explains that a document served by mail is deemed to have been received five days after it is mailed. As a result, I find that the Tenant was served with the documents on March 31, 2014 pursuant to section 89(1) (c) of the Act. In addition, when the Tenant made their Application on March 13, 2014, the Tenant was provided with the Notice of Hearing document which detailed the same date and time for this hearing as both Applications were scheduled to be heard together.

However, the Tenant failed to appear for the 20 minute duration of this hearing, despite being provided notice of the hearing in accordance with the Act. Based on this, I dismiss the Tenant’s Application without leave to re-apply.

At the start of the hearing, I determined that the Landlord had not made a claim or provided written evidence in relation to a claim for damages to the rental suite, even though this had been selected on the Landlord's Application. The Landlord also claimed for unpaid rent for the months of April and May, 2014 as this was not known at the time the Landlord made the Application. As a result, I amended the Landlord's Application pursuant to section 64(3) (c) of the Act, to remove the Landlord's claim for damages to the rental suite and add a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement based on the above testimony.

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 for the months of March, April and May, 2014?
- Is the Landlord entitled to keep the Tenant's security and pet damage deposit in full or partial satisfaction of this claim?

Background and Evidence

The Landlord testified that this tenancy started on October 1, 2011 for a fixed term of one year after which the tenancy continued on a month to month basis. A written tenancy agreement was completed and the Landlord collected a security deposit and a pet damage deposit from the Tenant in the amount of \$647.50 each at the start of the tenancy, for a total amount of \$1,295 which the Landlord still retains. Rent in the amount of \$1,295.00 was payable by the Tenant at the start of the tenancy and this amount was increased to \$1,344.00, via a rent increase, which is currently payable on the first day of each month.

The Landlord testified that the Tenant failed to pay full rent for March, 2014, choosing to pay only \$1,150.00 and leaving an outstanding balance of \$194.00 due on March 1, 2014. The Landlord testified that the Tenant had habitually paid rent late throughout the tenancy and as a result, he personally served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on March 6, 2014. The Notice, which was provided as evidence for the hearing, had an effective date of vacancy of March 16, 2014 due to unpaid rent in the amount of \$1,344.00. The Landlord testified that this amount should have been \$194.00 but he had documented the full amount because he thought this was the correct way to complete it.

The Landlord further testified that since the time of issuing this Notice and making the Application, the Tenant had also failed to pay for April and May 2014 rent. As a result the Landlord claims loss of rent for March, April and May, 2014 for a total amount of \$2,882.00.

The Landlord withdrew his claim for late fees associated with late payments made by the Tenant throughout the tenancy as he only wanted to claim for the outstanding rent.

Analysis

Firstly, I find that the contents of the Notice complied with section 52 of the Act. Secondly, I find that the Notice was personally served to the Tenant in accordance with section 88(a) of the Act on March 6, 2014.

Section 46(4) of the Act explains that on receiving a notice to end tenancy for unpaid rent, a Tenant may dispute the Notice by making an Application or pay the outstanding rent owed within five days. Section 46(6) of the Act states that if the Tenant does neither, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit on the effective day of the Notice.

While the Tenant did make an Application to dispute a notice to end tenancy for cause and for Landlord's use of the property, the Tenant did not apply to cancel the notice to end tenancy for unpaid rent and failed to appear for the hearing to dispute the Landlord's evidence.

As a result, I accept the undisputed Landlord's evidence that the Tenant has not paid the outstanding rent for the month of March, 2014 in the amount of \$194.00 and therefore the Landlord is entitled to an immediate Order of Possession as the effective date on the Notice has passed.

I also accept the Landlord's undisputed evidence that the Tenant also owes unpaid rent for the months of April and May, 2014 in the amount of \$2,688.00. As a result, I find that the Landlord is entitled to a Monetary Order for a total amount of \$2,882.00 in unpaid rent.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$2,932.00.

As the Landlord already holds \$1,295.00 in the Tenant's deposits, I order the Landlord to retain this amount in partial satisfaction of the Landlord's claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded \$1,637.00.

Conclusion

For the reasons set out above, I find the Landlord is entitled to an Order of Possession effective **2 days after service on the Tenant**. This order must be served on the Tenant and 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 Act in the amount of **\$1,637.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The Tenant's Application is dismissed without 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 06, 2014

Residential Tenancy Branch

