



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, CNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession based on unpaid rent;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a notice to end tenancy.

Preliminary matter

At the outset of the hearing the landlord's agent indicted that MY, is not a tenant under the terms of the tenancy agreement. The agent stated MY lives in the rental unit but is merely an occupant. The agent stated that she seeks to have MY, removed from the style of cause.

As an occupant has no legal rights or obligation under the Act, I find it appropriate to remove MY from the style of cause.

Tenant's application

At the outset of the hearing at person identifying himself as EH, stated he was not acting as agent for the tenant and had no information about the case. EH stated the tenant would not be attending due to a medical issue. EH left the telephone conference.

As EH was not acting as agent and there was no evidence present of a medical issue. I find it would be administratively unfair and prejudicial to the landlord not to proceed with the tenant's application. Therefore, the tenant's application was dealt with in their absence.

This matter was set for hearing by telephone conference call at 11:00 A.M. on this date. The line remained open while the phone system was monitored for ten and the only participant who called into the hearing during this time was the landlord. Therefore, as

the tenant did not attend the hearing by 11:40 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenant's application without leave to reapply.

Landlord's application

The landlord's agent stated the application for Dispute Resolution and Notice of Hearing were served in two methods; the first was by registered mail sent on April 28, 2014, a Canada post tracking number was provided, the second method was in person on April 29, 2014. I find the tenant has been duly served in accordance with the Act.

The landlord's agent stated the occupant MY, was also served in the same two methods although there was no requirement to do so.

The landlord's agent appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

The landlord's agent stated on April 7, 2014, the tenant was served with a 10 Day Notice to End Tenancy for nonpayment of rent, by posting to the door of the rental unit. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice. The effective vacancy date was April 19, 2014.

The landlord's agent stated although the tenant did file an application to dispute the notice it was not within 5 days as required and in fact it was filed after the effective vacancy date.

The landlord's agent stated the tenant also failed to pay rent within the five days and has not paid any rent for April and May 2014. The agent believes the tenant did not appear simply to delay the process as they have only paid rent once since taking possession of the rental unit.

The tenant's application was filed on April 22, 2014, the tenant writes in their application that the rent money had disappeared when he was in the hospital and that he would like to pay rent instead of being evicted.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenant in their application acknowledged that rent was not paid for April 2014, when due under the terms of the tenancy agreement and would like to pay rent instead, rather than being evicted. The evidence of the landlord was the tenant did not pay rent for April and has not paid any rent for May 2014.

Although the tenant did file an application to dispute the notice, the tenant did not appear and their application was dismissed.

Further the evidence support the tenant failed to pay rent within the five days as required by the Act, and has now not paid any rent for both April and May 2014. I find the tenant was served with a valid notice to end the tenancy.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of **\$3,900.00** comprised of unpaid rent for April, May 2014 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of \$975.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,925.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant failed to pay rent.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 08, 2014

Residential Tenancy Branch

