



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pendrellis Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 25, 2014. Canada Post tracking information was provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlord's agent testifies that this month to month tenancy started on August 01, 2013. Rent for this unit is subsidized to \$291.00 plus \$20.00 for Hydro and \$26.00 for cable per month to a total of \$337.00. Rent is due on the 1st of each month.

The landlord's agent testifies that the tenant's rent cheques for January and February were returned due to insufficient funds (NSF). The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on February 26, 2014 which was sent by registered mail and was deemed to have been served five days after sending. This Notice states that the tenant owes rent of \$724.00 which was due on February 01, 2014. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on March 10, 2014. The tenant did not pay the outstanding rent or dispute the Notice within five days. However the tenant did pay \$352.00 on March 07; \$337.00 on April 04 and \$362.00 on May 05, 2014. These rent payments were accepted

by the landlord for use and occupancy only and did not reinstate the tenancy. The tenant owes rent to date of \$624.00. The landlord requests to amend their application as other rent was owed since the application was made.

The landlord seeks to recover \$75.00 in NSF fees for three returned rent cheques in January, February and March, 2014. The landlord's agent agrees that this fee is not documented in the tenancy agreement.

The landlord requests an Order of Possession to take effect as soon as possible; and a Monetary Order to recover the unpaid rent and filing fee of \$50.00.

Analysis

Section 26 of the *Residential Tenancy Act (Act)* states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, as the tenant has failed to attend the hearing to dispute the landlords claim I find from the documentary evidence and testimony of the landlord's agent that the tenant owes rent of **\$624.00**. I have allowed the landlord to amend their claim as the tenant would be aware that rent is due on the 1st day of each month. The landlord is entitled to a Monetary Order pursuant to s. 67 of the *Act* to recover these rent arrears.

The landlord has claimed a further amount of \$75.00 for NSF fees; A landlord may charge a fee for returned cheques where the tenancy agreement provides for that fee in accordance with s. 7(1)(c) of the Residential Tenancy Regulations. I have reviewed the tenancy agreement provided in evidence by the landlord and find the tenancy agreement does not provide for a fee to be charged of \$25.00 for NSF fees. S. 7(2) of the regulations states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee. Consequently, I find the landlord is not entitled to recover \$75.00 for NSF fees for January, February and March, 2014. This section of the landlords claim is therefore dismissed.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As the Notice was served by registered mail it was deemed served five days after it was sent on March 03, 2014. Therefore the effective date of the Notice is amended to March 13, 2014 pursuant to s. 53 of the *Act*. As this date has since passed,

I grant the landlord an Order of Possession effective two days after service upon the tenant, pursuant to s. 55 of the *Act*.

As the landlord has been largely successful with this claim I find the landlord is entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$674.00** comprised of unpaid rent and the filing fee. The Order must be served on the Respondent and is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service upon the tenant**. This Order must be served on the Respondent and may be filed in the Supreme Court and enforced 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 *Residential Tenancy Act*.

Dated: May 12, 2014

Residential Tenancy Branch

