



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 as a result of the Landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an Order of Possession for unpaid rent or utilities, a Monetary Order for unpaid rent or utilities, and to recover the filing fee.

The Landlord attended the teleconference hearing. During the hearing the Landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the Tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The Landlord testified that the Notice of Hearing was served on the Tenant by registered mail on August 27, 2014. A copy of the registered mail receipt and tracking number were provided in evidence. Section 90 of the Act provides that documents served in this manner are deemed served five days later. As September 1, 2014 is a holiday, I accept the Landlord's undisputed testimony that he served the Tenant by registered mail as of September 2, 2014 and that he was sufficiently served as of that date under the *Act* as a result.

Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

No written tenancy agreement exists between the parties. As such, the Landlord testified as to the details of the tenancy and stated that the Tenant and the Tenant's mother and stepfather previously rented the entire home from the Landlord. On June 1,

2013, the mother and stepfather moved from the upper unit, and at the same time the Tenant began paying to the Landlord the sum of \$800.00 per month, on the first of the month, for rent of the basement suite. At this time he also provided a security deposit in the amount of \$400.00. The Tenant paid \$400.00 for the month of July, which was only half of the \$800.00 due, leaving a balance of \$400.00 for the month of July.

Based on the Landlord's affirmed testimony, I find that the Tenant was served with a 10 Day Notice to End Tenancy for non-payment of rent at 2:00 p.m. on August 2, 2014 by posting to the rental unit door (the "Notice").

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. Section 90 provides that documents served in this manner are deemed served three days later, namely August 5, 2014. The Notice also explains the Tenant had five days from the date of service, in this case, August 10, 2014, to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant has not made any further payments to the Landlord and did not pay rent for August, 2014 or September, 2014.

Analysis

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

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

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 \$2,050.00 comprised of \$400.00 for the balance of July's rent, \$800.00 for August rent and \$800.00 for September rent and the \$50.00 fee paid by the Landlord for this application.

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 and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

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

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: September 17, 2014

Residential Tenancy Branch

