



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STONECLIFF PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent and to recover the filing fee from the tenants.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail, which was sent on August 2, 2014 and successfully delivered to the tenants on August 6, 2014, the tenants did not appear. Filed in evidence are Canada posts tracking numbers and Canada post track histories for each of the tenants. I find that the tenants have been duly served in accordance with the Act.

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

Preliminary matter

At the outset of the hearing, the landlord's agent request to amend the style of clause. The landlord's agent stated that although the name of the tenant KC, is spelled correctly in the application, and that is the name the tenant has signed in the Canada track history and their application for tenancy. He would also like to include the version of spelling that is listed on the tenancy agreement as an also known as, even though that was likely a typing error that was not corrected. I accept the landlord's agent undisputed testimony that there are two version of the spelling of the tenant KC, first name. Therefore, I grant the landlord request and amend the style of cause to include both spellings of KC name.

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 recover the cost of the filing fee?

Background and Evidence

Based on the testimony of the landlord's agent, I find that the tenants were served with a notice to end tenancy for non-payment of rent by registered mail sent on July 15, 2014, which the tenants acknowledge receiving by signing the Canada post track history on July 16, 2014. The notice informed the tenants 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 landlord's agent testified that rent was not paid within the five days. The landlord stated that although the cheque was dated July 15, 2014, it was not sent by express post until July 22, 2014 and it was not received until July 31, 2014. Filed in evidence is a copy of the cheque dated July 15, 2014, a copy of the Canada post tracking number which supports the package was not processed until July 22, 2014 and received on July 31, 2014.

The landlord's agent testified that they accepted rent for July, 2014, August 2014, and September 2014, for "use and occupancy only". The landlord's agent stated the tenants have failed to pay rent for October 2014, which was due on the first of the month. The landlord seeks an order of possession and a monetary order for October 2014, unpaid rent.

Analysis

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

The tenants did not pay the outstanding rent within five days of receiving the notice to end tenancy on July 16, 2014. The tenants did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

In this case, the tenants have paid rent for July, August and September 2014. However, the landlord did not reinstate the tenancy as the receipts issued to the tenants were for use and occupancy. Further the tenants have failed to pay rent for October 2014, when due on the first of the month under the terms of the tenancy agreement.

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 **\$1,300.00** comprised of unpaid rent for October 2014 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 tenants failed to pay rent and did not file to dispute the notice to end tenancy. The tenants are 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, and a monetary order for rent 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: October 02, 2014

Residential Tenancy Branch

