



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 dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent, a monetary order for unpaid rent and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

I note at the outset of the hearing I confirmed that the Landlord and the male Tenant had no witnesses that would provide testimony during the hearing. However, during the course of the hearing the female Tenant, who was not affirmed, began speaking to the Tenant in a loud enough voice and near enough to the phone that she could be heard during the hearing.

In fact, during the course of the hearing the male and female Tenants began arguing and swearing at each other. The male Tenant was cautioned about inappropriate language and yelling, and was asked to request the female Tenant cease yelling in close proximity to the phone.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an order of possession and monetary relief?

Background and Evidence

The tenancy began on or about June 8, 2014, with the parties entering into a written tenancy agreement. The monthly rent was set at \$1,795.00 and the Tenants were to pay a security deposit of \$897.50, although the Landlord testified that it had not been paid in full. I note the Landlord did not claim for the security deposit in this proceeding.

The Landlord testified that he served the Tenants personally with a 10 day Notice to End Tenancy for unpaid July rent in the amount of \$1,795.00 on July 6, 2014 (the "Notice").

The male Tenant initially denied being served with the Notice. The Landlord testified that the Tenant had signed for it. In evidence the Landlord supplied copy of a Notice that appears to be signed in the same manner as the tenancy agreement. The male Tenant then agreed he had signed the Notice and stated he now recalled signing the document and receiving the eviction Notice.

Based on the testimony of both parties, I find that the Tenants were served with the Notice on July 6, 2014.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

When the male Tenant was asked if the rent was paid he testified he thought that they had disputed the Notice by filing their own Application. The male Tenant was then asked what the file number was and the date of hearing for their Application.

The male Tenant spent several minutes looking for the file number of their Application. He was unable to provide the file number or the date of hearing. The male Tenant then asked the female Tenant where their Application was and the female Tenant could be heard saying, "... they did not give me any documents at the access centre, they said the Landlord had an application and so we didn't get any documents...", or words to that effect.

The Tenants then began arguing and yelling at each other. As explained above they had to be cautioned.

The Landlord testified that he had not been served with an Application or any Notice of Hearing by the Tenants.

The Landlord further testified about troubles that he had with the Tenants and police attendances at the rental unit, and requested compensation for damages to the rental unit. The Landlord also claimed for unpaid utilities.

Analysis

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

I find the Tenants have not paid the outstanding rent and have insufficient evidence they applied to dispute the Notice, and therefore, they are 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 Tenants 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 Tenants had no evidence of any authority they had 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 Tenants. This order must be served on the Tenants and 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 **\$1,845.00** comprised of unpaid rent for July 2014, and the \$50.00 fee paid by the Landlord for this application. I grant the Landlord an order under section 67 for the amount due. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The claims of the Landlord for unpaid rent for August and September of 2014, as well as any claims for damages or unpaid utilities are dismissed with leave to reapply.

Conclusion

The Tenants failed to pay rent and had insufficient evidence they filed to dispute the Notice to End Tenancy.

In these circumstances, 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 effective two days after service on the Tenants and is granted a monetary order for the balance due. The Landlord has leave to apply for further monetary orders.

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 18, 2014

Residential Tenancy Branch

