



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlords appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlords testified they served the Tenant with the Notice of Hearing and their Application on July 23, 2014, by sending it express registered mail. Under the Act documents served this way are deemed served five days later. I note that refusal or neglect to accept mail is not a ground for review under the Act. I find the Tenant was duly served in accordance with the Act.

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.

Issue(s) 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

Based on the affirmed testimony of the Landlords and their documentary evidence, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of \$1,500.00 in rent on July 5, 2014, by registered mail (the "Notice").

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

The Landlords testified that the Tenant had not paid rent of \$600.00 per month for June, July, August and September of 2014. The Landlords also testified that the Tenant did not pay rent for May of 2014. The Landlords further testified they wanted to claim for a personal loan they made to the Tenant.

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 there is no evidence that the Tenant had any 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 **\$2,450.00** comprised of \$2,400.00 in rent due for June, July, August and September, and the \$50.00 fee paid by the Landlords for this application.

The Landlords were informed that the Residential Tenancy Branch has no jurisdiction to rule on the personal loan they made to the Tenant as this did not form part of the tenancy agreement. The Landlords will have to make this claim in the appropriate court.

I also did not allow the claims for any other portion of rent, as the Landlords had failed to provide a ledger or an accounting of the amounts the Tenant paid before June and what was owed up to June. Nevertheless, I accept their testimony that the rent is owed for June, July, August and September of 2014.

I order that the Landlords retain the security deposit of **\$325.00** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$2,125.00**.

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

The Landlords have leave to apply for other rent money owed, but not granted in this Application. Personal loans are not claimable under this Act.

Conclusion

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

The Landlords are granted an order of possession requiring the Tenant to peaceably vacate the rental unit two days after he is served with the order.

The Landlords may keep the security deposit in partial satisfaction of the claim, and are 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 23, 2014

Residential Tenancy Branch

