



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MNR, MNDC, FF
CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord and the Tenant. The Landlord applied for an Order of Possession for cause, a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), and to recover the filing fee for the cost of the Application. The Tenant applied to cancel the notice to end tenancy for cause.

The Landlord appeared for the hearing and provided affirmed testimony but no written evidence. The Landlord requested during the hearing to amend his Application to keep the Tenant’s security deposit as he had been informed by the Residential Tenancy Branch for unknown reasons to strike this off his Application. Pursuant to Section 64(3) (c) of the Act, I amended the Landlord’s Application to consider this request.

There was no appearance for the Tenant for the 22 minute duration of the hearing, despite the Tenant personally being served notice of this hearing by the Landlord and the Tenant making her own Application which was scheduled to be heard with the Landlord’s Application in this hearing. Therefore, the Tenant’s Application is dismissed.

The Landlord explained during the hearing that he was seeking an Order of Possession as the Tenant was still residing in the rental suite and had still not paid rent which is the reason why he made his Application.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to unpaid rent?
- Is the Landlord entitled to keep the Tenant’s security deposit in partial satisfaction of his claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started in January, 2014 on a month to month basis. Rent was payable by the Tenant on the first day of each month in the amount of \$600.00. The Landlord was provided with a \$200.00 security deposit at the start of the tenancy which the Landlord still retains. No written tenancy agreement was completed.

The Landlord testified that after January, 2014 the Tenant began to pay rent late; for February and March the Tenant paid rent at the end of the first week; for April, she paid the rent in the middle of the month; for May and June, she paid rent on the last week of the month; July's rent was paid in August; and no rent has been paid for August, September and October, 2014.

The Landlord testified that on August 14, 2014 he personally served the Tenant with a 1 Month Notice to End Tenancy (the "Notice") for a number of reasons, the main one of which was that the Tenant was repeatedly late paying rent. The Landlord acknowledged that he should have used other remedies under the Act to deal with the unpaid rent.

The Notice was provided in written evidence by the Tenant prior to this hearing and shows an effective vacancy date of the Notice of September 13, 2014.

The Landlord explained that the Tenant is currently in rental arrears for a total amount of \$2,000.00 which the Landlord now seeks to recover from the Tenant as well as his verbal and written request for an Order of Possession.

Analysis

I accept the Applications of both parties as well as the Notice as sufficient evidence to establish that a tenancy exists between the parties.

I find that the contents of the Notice complied with Section 52 of the Act and that it was served to the Tenant on August 14, 2014. Section 47(2) requires that the time period the Notice becomes effective must be for a period of one full rental month. As a result, the effective vacancy date of the Notice is corrected from September 13 to September 31, 2014 pursuant to Section 53 of the Act.

Section 47(5) of the Act explains that if a Tenant fails to make an Application to dispute the Notice, then they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice. While the Tenant did make an Application within the time limits stipulated by the Act to dispute the Notice, the Tenant failed to

appear for the hearing and therefore I find she is conclusively presumed to have accepted the Notice and must move out of the rental suite. As the Tenant has failed to pay rent and the effective vacancy date of the Notice has now passed, the Landlord is entitled to an Order of Possession effective two days after service on the Tenant.

In relation to the Landlord's monetary claim, I accept the undisputed oral evidence of the Landlord including the Notice that the Tenant has failed to pay the Landlord \$2,000.00 in rental arrears.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$50.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$2,050.00.

As the Landlord already holds \$200.00 of the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded \$1,850.00.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental suite.

I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$1,850.00**. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

The Tenant's Application is dismissed **without** leave to re-apply.

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 15, 2014

Residential Tenancy Branch

