



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY
and [tenant name suppressed to protect privacy]

DECISION

CNR, MT, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent and for more time to apply to set aside a Notice to End Tenancy.

The Tenant stated that on the date he received the Application for Dispute Resolution and the Notice of Hearing from the Residential Tenancy Branch he delivered those documents to the Landlord's business address. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act* (Act); however the Landlord did not appear at the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside or should the Landlord be granted an Order of Possession?

Should the Tenant be granted more time to apply to set aside a Notice to End Tenancy for Unpaid Rent?

Is the Landlord entitled to a monetary Order for unpaid rent and to keep all or part of the security deposit?

Background and Evidence

The Tenant stated that he entered into a tenancy agreement with the Landlord, for which he agreed to pay monthly rent of \$915.00 by the ninth or tenth day of each month. He stated that on August 19, 2014 he offered to pay rent for August of 2014 but the offer was declined by the Landlord.

The Tenant stated that he thinks he received the Ten Day Notice to End Tenancy for Unpaid Rent that is the subject of this dispute resolution proceeding on August 20, 2014, although he is not certain of the date as he does not have the Notice with him. This is consistent with the

information provided by the Tenant on page two of the Tenant's Application for Dispute Resolution.

The Tenant stated that he did not apply to dispute the Notice to End Tenancy until August 29, 2014 because he did not fully read the Notice until after the week-end, at which time he realized he was required to dispute the Notice within five days of receiving it.

Analysis

The hearing was scheduled for 1:00 p.m. on this date. This hearing commenced at the scheduled start time and was concluded at 1:20 p.m. By the time the hearing had concluded the Landlord had not appeared. I find that the Landlord failed to diligently pursue the Landlord's Application for Dispute Resolution and I therefore dismiss the Landlord's Application, without leave to reapply.

On the basis of the undisputed evidence, I find that the Tenant received the Ten Day Notice to End Tenancy on August 20, 2014 and that he did not dispute it until August 29, 2014.

Section 66(1) of the *Act* authorizes me to extend the time limit for setting aside a Notice to End Tenancy only in exceptional circumstances. The word "exceptional" means that I am unable to extend this time limit for ordinary reasons. The word "exceptional" implies that the reason for failing to meet the legislated time lines is very strong and compelling. A typical example of an exceptional reason for not complying with the timelines established by the *Act* would be that the Tenant was hospitalized for an extended period after receiving the Notice.

Simply neglecting to read all of the information of the Notice to End Tenancy in a timely manner is not, in my view, a compelling reason for being unable to dispute the Notice to End Tenancy within five days of receiving the Notice. I therefore dismiss the Tenant's application for more time to apply to set aside the Notice to End Tenancy.

As I have not extended the time limit for setting aside the Ten Day Notice to End Tenancy and the Tenant did not dispute this Notice within five days of receiving it, I find that he is conclusively presumed to have accepted that the tenancy ended on the effective date of the Ten Day Notice to End Tenancy, pursuant to section 46(5) of the *Act*. I therefore dismiss the Tenant's application to set aside the Ten Day Notice to End Tenancy.

Conclusion

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 21, 2014

Residential Tenancy Branch

