



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes OPR, MNR, MNSD, MNDC, OPR, FF

Introduction

This hearing dealt with cross Applications. In the Application for Dispute Resolution filed by the Landlord he sought 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. The Tenant sought an Order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities as well as to recover the filing fee.

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.

Issues to be Decided

1. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?
2. Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside and is the Tenant entitled to a Monetary Order in the amount of the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement.

The tenancy began January 1, 2012. Monthly rent was payable in the amount of \$950.00. A security deposit in the amount of \$475.00 was paid on December 8, 2011.

The Tenant failed to pay rent for the month of July 2014, in the amount of \$950.00, for the month of August 2014, in the amount of \$950.00 and for the month of September 2014, in the amount of \$950.00. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on September 11, 2014 by attaching a copy to the rental unit door on September 11, 2014 at 9:00 p.m. indicating the amount of \$2,850.00 was due as of September 1, 2014 (the "10 Day Notice").

Section 90 of the Act provides that documents served in this manner are deemed served three days later. Based on the testimony of the Landlord and the filed Proof of Service Notice to End Tenancy, I find that the Tenant was served with the 10 Day Notice as of September 4, 2014.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, September 9, 2014. 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.

At the hearing, the Tenant confirmed that the parties had a verbal agreement that she would pay \$50.00 towards the cost of the utilities. No such requirement existed in the residential tenancy agreement, however she paid this amount from the commencement of the tenancy until June 2014. At the time of the hearing, the Tenant had not paid the \$50.00 per month for the months July, August, September, and October 2014.

Introduced in evidence was a letter from the Landlord to the Tenant dated August 18, 2014 wherein he confirms the original agreement of \$950.00 per month in rent and \$50.00 per month as the Tenants share of the utilities.

The Tenant confirmed that she had not paid rent since June 2014, nor had she paid the \$50.00 per month towards the utilities since June 2014. The Tenant testified that she discontinued paying as the Landlord attempted to end her tenancy of December 2014 and increase her contribution to utilities to \$100.00 per month. She stated that the Landlord delivered a letter to her mailbox in September 2014 indicating this request. The Tenant testified that this letter was delivered in September 2014. While not introduced in evidence at the time of the hearing, the Tenant subsequently sent the letter to Residential Tenancy Branch and it was made available to me. I have reviewed that letter and note that it is undated. It also includes a line for the Tenants signature and acknowledgement of the terms of the letter which is dated August 2014.

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 the Tenant had no authority under the Act to not pay rent.

While the Tenant may have been confused by the two letters she received from the Landlord in August of 2014, this confusion does not justify the Tenant's failure to pay rent. The Tenant's Application to set aside the 10 Day Notice is dismissed.

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 \$5,050.00 comprised of the following:

- July 2014 rent: \$950.00
- July 2014 utilities: \$50.00
- August 2014 rent: \$950.00
- August 2014 utilities: \$50.00
- September 2014 rent: \$950.00
- September 2014 utilities: \$50.00
- October 2014 rent: \$950.00
- October 2014 utilities: \$50.00
- November 2014 rent: \$950.00
- November 2014 utilities: \$50.00

and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$475.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$4,525.00.

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

Conclusion

The Tenant failed to pay rent and her application to dismiss the Notice is dismissed.

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim, and is 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: November 17, 2014

Residential Tenancy Branch

