



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD, MNDC, FF
CNR, OLC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlords and the Tenant. The Landlords applied for an Order of Possession and a Monetary Order for: unpaid rent; damages to the rental unit; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"); to keep the Tenant's security deposit; and to recover the filing fee. The Tenant applied to cancel the notice to end tenancy.

Preliminary Issues

Both Landlords appeared for the hearing and provided affirmed testimony. A copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") was provided in written evidence by both parties.

There was no appearance for the Tenant during the 13 minute duration of the hearing despite the Tenant being provided with this same date and time to hear her Application. The Landlords testified that they together served their Application and notice of this hearing personally to the Tenant on September 23, 2014. As a result, I find that the Landlords served the Tenant with the required documents in accordance with Section 89(1) (a) of the Act.

The Landlords explained that since the time of making their Application, the Tenant has also failed to pay rent for the months of October and November, 2014 which they now also seek to recover from the Tenant. The Landlords explained that their monetary Application was for unpaid rent only and that there was no security deposit paid by the Tenant at the start of the tenancy. As a result, I only determined the Landlords' Application for an Order of Possession and the Landlords' monetary claim for unpaid rent which I now amend, pursuant to Section 64(3) (c) of the Act, on the Landlords' Application for the four months claimed.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Landlords testified that this tenancy began approximately three years ago. No written tenancy agreement was completed but rent was established between the parties in the amount of \$600.00 payable by the Tenant on the first day of each month.

The Landlords testified that the Tenant failed to pay rent for August and September, 2014 leaving an outstanding balance of \$1,800.00. As a result, both Landlords together served the Tenant with the Notice on September 4, 2014 for the outstanding balance of rent by attaching it to the Tenant's door. The Notice shows an effective date of vacancy of September 4, 2014. I note that the Landlord failed to complete the rental unit address on the Notice.

The Landlord further testified that the Tenant has also failed to pay rent for October and November, 2014 and seeks to now recover this amount, for a total of \$2,400.00 in unpaid rent.

Analysis

Section 26(1) of the Act requires a Tenant to pay rent under a tenancy agreement whether or not the Landlord complies with the Act. Section 52 (b) of the Act requires that in order for a Notice to be effective, it must give the address of the rental unit. However, Section 68(1) (a) of the Act allows the director to amend a Notice that does not comply with Section 52 of the Act if the person receiving the Notice knew or should have known the information that was omitted.

Based on the foregoing, I find that as the Tenant disputed the Notice by making an Application on the basis that she had paid rent, it is reasonable to assume on this basis that the Tenant knew that the Notice related to her rental suite. As a result, I amend the Notice to include the rental unit address.

Sections 46(4) and (5) of the Act states that within five days of a Tenant receiving the Notice, a Tenant must pay the overdue rent or make an Application to dispute the Notice; if the Tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date of the Notice.

As the Landlords posted the Notice on the Tenants door, taking into account the deeming provisions of Section 90(c) of the Act, I find that the Tenant made the Application to dispute the Notice within the five day time limit stipulated by Section 46(4) of the Act. However, the Tenant failed to appear for the hearing to prove that she paid the outstanding rent or had authority under the Act to not pay rent.

Therefore, the Landlords are entitled to an Order of Possession effective two days after service on the Tenant as the effective date of vacancy, being ten days after the Tenant was deemed to have received the Notice, has now passed. The Landlords are also awarded the rental arrears for the four months claimed in the amount of **\$2,400.00**. As the Landlords have been successful in this matter, the Landlords are entitled to recover the **\$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable to the Landlords is \$2,450.00.

Conclusion

For the reasons set out above, I grant the Landlords an Order of Possession effective **2 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 unit.

I also grant the Landlords a Monetary Order pursuant to Section 67 of the Act in the amount of **\$2,450.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The Landlord's Application to keep the Tenant's security deposit is dismissed. The Landlord's Application for damages to the rental suite and monetary compensation is dismissed **with** leave to re-apply. As the Tenant failed to appear for the hearing, I hereby dismiss the Tenant's Application **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: November 05, 2014

Residential Tenancy Branch

