



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MND, 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, an order of possession based on a one month Notice to End Tenancy for cause, a monetary order for unpaid rent and damage, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord 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 Landlord testified they served the Tenants with the Notice of Hearing and their Application and documents on October 27, 2014, by personal service, which was witnessed by a third party who has signed a statement. I find the Tenants were 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

Have the Tenants 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 Landlord, I find that the Tenants were served with a 10 day Notice to End Tenancy for non-payment of rent on October 2, 2014, by personal service which was witnessed by a third party who signed a statement they witnessed this service (the "Notice for Unpaid Rent").

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

The Landlord also testified that on September 29, 2014, she had personally served the Tenants with a one month Notice to End Tenancy for cause which was witnessed by a third party who signed a statement they witnessed this service (the "Cause Notice"). The Cause Notice explains to the Tenants they have 10 days to dispute it by filing an Application for Dispute Resolution.

Both the Notice for Unpaid Rent and the Cause Notice explain to the Tenants that if they fail to pay the rent or fail to dispute the notices, the tenancy will end and they must vacate the rental unit.

The Landlord testified that the Tenants owed \$100.00 from previous rent in April of 2014, and \$350.00 for a portion of November rent. A partial payment was received for November; however, the Landlord issued a receipt for use and occupancy only, and did not reinstate the tenancy.

The Landlord also claimed for damages to the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice for Unpaid Rent, and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice for Unpaid Rent. Under section 26 of the Act, the Tenants must not withhold rent, even if they feel 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; for example, an order from an Arbitrator reducing their rent. In this situation there is no evidence that the Tenants had authority under the Act to not pay rent.

Furthermore, the Tenants did not dispute the Cause Notice and are therefore conclusively presumed under section 47(5) of the Act to have accepted the tenancy ended on the effective date of that notice.

Therefore, I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenants. 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 \$500.00 comprised of \$100.00 in outstanding rent from before October 2014, \$350.00 due for November rent

and the \$50.00 fee paid by the Landlord for this application. I order that the Landlord retain the security deposit of \$350.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$150.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The claims of the Landlord for damages to the rental unit are premature, as the Tenants are required to make repairs to the rental unit they are responsible for. These claims are dismissed with leave to reapply by the Landlord.

Conclusion

The Tenants failed to pay rent and did not file to dispute the two different Notices to End Tenancy. The Tenants are conclusively presumed under the law to have accepted that the tenancy ended on the effective dates of the notices.

The Landlord is granted an order of possession, may keep the security deposit in partial satisfaction of the claim, and is granted a monetary order for the balance due. The other monetary claims of the Landlord are dismissed with leave to reapply.

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 13, 2014.

Residential Tenancy Branch

