



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent, a monetary order for unpaid rent and late fees, and to recover the filing fee for the Application.

Both parties appeared at the hearing. 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 to 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.

Preliminary Issues

The Tenant had called into the hearing approximately eight minutes late with the assistance of the telephone company operator. The hearing had begun as scheduled at 11:00 a.m. and I explained to the Tenant what had taken place in his absence and summarized the testimony that had been heard from the Agent for the Landlord. The hearing process was explained to the Tenant and he was asked if he had any questions. Following this, the hearing proceeded with him being affirmed.

I also note the Agent for the Landlord had amended the Application prior to the hearing, and testified this was served on the Tenant by registered mail, sent on October 15, 2014. The Agent testified that the Tenant had signed for this on October 21, 2014.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession and monetary relief?

Background and Evidence

This tenancy began on November 1, 2008, with the parties entering into a written tenancy agreement. At the time of the 10 day Notice to End Tenancy being served on the Tenant the monthly rent was \$505.19, and the tenancy agreement contained a late payment of rent fee of \$25.00.

Based on the testimony of the Agent for the Landlord, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on September 2, 2014, by personal service (the "Notice").

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. 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.

The Agent for the Landlord testified that the Tenant has also failed to pay rent for October and November of 2014. The Agent had amended their Application to claim for September and the October rent, plus the late payment fees and the filing fee for the Application. The Agent testified that the Landlord was owed \$505.19 in rent for each of September and October, \$50.00 for two late payment fees, totalling \$1,060.38.

The Tenant testified that he did not dispute the Notice as he agreed he did not pay the rent for September and October to the Landlord.

The Tenant alleged that the Landlord owes him money as the Landlord did not allow the Tenant to rent out rooms in his manufactured home. The Tenant's position is that the Landlord owes him money in compensation for not allowing him to rent out rooms according to some form of commercial law.

The Tenant also claimed there was an error in law on the Notice as it explained he had to vacate the rental site in 10 days if he did not pay the rent or dispute the Notice. The Tenant argued it was not possible to move a manufactured home in 10 days and therefore, the Notice must have had an error in it.

Analysis

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

The Tenant himself testified that he has not paid the outstanding rent and that he did not apply to dispute the Notice. Therefore, the Tenant is conclusively presumed under section 39(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, that being September 12, 2014.

Section 39 of the Act deals with the Landlord's Notice for non-payment of rent:

39 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than **10 days after the date the tenant receives the notice**.

(2) A notice under this section must comply with section 45 [form and content of notice to end tenancy].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) **If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant**

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the manufactured home site to which the notice relates by that date.

...

[Emphasis added.]

Under this section of the Act, the Tenant is required to vacate the site by the effective date of the Notice, which is 10 days from the date of service of the Notice.

Under section 20 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, such as an order from an Arbitrator. In this situation the Tenant had no evidence he had authority to not pay rent under the Act.

Furthermore, it was explained to the Tenant that if he had rented out a room or rooms in his manufactured home this would be under the jurisdiction of the *Residential Tenancy Act*, as the Tenant had no evidence he was a commercial landlord exempt from the *Residential Tenancy Act*.

I also find that the Notice had been made in the approved form.

Therefore, I find that the Landlord is entitled to an order of possession for the rental site. The Agent for the Landlord asked that it be effective at the end of the month and accordingly, I grant the order to be effective **at 1:00 pm November 30, 2014**. 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 **\$1,110.38**, comprised of September and October rent (2 x \$505.19), two late fees (2 x \$25.00) and the \$50.00 fee paid by the Landlord for this application.

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 did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession and 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 03, 2014

Residential Tenancy Branch

