



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ESI MARKETING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, 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 Landlord and the Tenant.

The Landlord applied for an Order of Possession and a Monetary Order for: unpaid rent; money owed or compensation for loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenant’s security deposit; and to recover the filing fee. The Tenant applied to cancel the notice to end tenancy, for the Landlord to comply with the Act, and to recover the filing fee.

An agent for the Landlord named on the Application (the “Landlord”) appeared for the hearing and provided affirmed testimony as well as written evidence in advance of the hearing. There was no appearance for the Tenant during the 12 minute duration of the hearing despite the Tenant being provided with this same date and time for their Application. The only written evidence provided by the Tenant prior to the hearing was a copy of the notice to end tenancy. Furthermore, the Landlord’s agent provided the Canada Post tracking number in written evidence as proof of service for the Notice of Hearing documents and a copy of the Landlord’s Application. As a result, I find that the Landlord served the Tenant in accordance with Section 89(1) (c) of the Act.

I have carefully reviewed the undisputed affirmed testimony of the Landlord as well as the written evidence submitted prior to the hearing in this decision as follows.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep all of the Tenant’s security deposit in partial satisfaction of the Landlord’s claim?

Background and Evidence

The Landlord testified that this tenancy began on June 1, 2014 for a fixed term of one year. Monthly rent is payable under the written tenancy agreement in the amount of \$1,350.00 due on the first day of each month. The Tenant paid a \$675.00 security deposit on May 17, 2014 which the Landlord still retains.

The Landlord testified that the Tenant only paid \$250.00 for September, 2014 rent leaving an outstanding balance of \$1,100.00. As a result, the Landlord served the Tenant personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on September 10, 2014 for the outstanding balance of rent. The Notice was provided as evidence and shows an effective date of vacancy of September 20, 2014.

The Landlord further testified that the Tenant has also failed to pay rent for October and November, 2014 and made an anticipated claim in the Application for this amount which remains unpaid.

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.

Sections 46(4) and (5) of the Act states that within five days of a Tenant receiving a 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 to which the Notice relates.

Having examined the Notice, I find that the contents complied with the requirements of the Act and that the Tenant was personally served with the Notice on September 10, 2014.

While the Tenant did make an Application within the allowable time limits to dispute the Notice, the Tenant failed to appear for the hearing to dispute the Landlord's testimony and provide testimony as to why the rent was not paid. As a result, I accept the Landlord's undisputed testimony and written evidence that the Tenant owes the Landlord **\$3,800.00** in unpaid rent (1,100 + 1,350 + 1,350).

As the effective date of the Notice has now passed, the Landlord is also entitled to an Order of Possession which is effective two days after service on the Tenant.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of the Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$3,850.00**.

As the Landlord already holds **\$675.00** in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded **\$3,175.00**.

Conclusion

For the reasons set out above, I grant the Landlord 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 Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$3,175.00**. 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.

As the Tenant failed to appear for the hearing and prove the Application, I hereby dismiss the Tenant's Application in its entirety **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 03, 2014

Residential Tenancy Branch

