



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 was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee.

Preliminary Issues

The Landlord appeared for the hearing and provided affirmed testimony through his son who translated the testimony and also provided affirmed testimony himself as the Landlord’s agent. The Landlord also provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and other written evidence prior to the hearing.

There was no appearance for the Tenant during the 24 minute duration of the hearing or any submission of written evidence prior to the hearing. Therefore, I turned my mind to the service of the Notice of Hearing documents by the Landlord.

The Landlord and his agent testified that a copy of the Landlord’s Application and the Notice of Hearing documents were served to the Tenant personally on September 26, 2014. In the absence of any evidence from the Tenant, I accept the undisputed evidence of the Landlord and his agent that the Tenant was served notice of this hearing pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the “Act”).

The Landlord explained that since the time of making the Application, the Tenant has also failed to pay rent for the months of September, October and November, 2014 which they now also seek to recover from the Tenant.

As a result, I allowed the Landlord’s to amend their monetary claim from \$1,650.00 to \$3,300.00 for six months of unpaid rent, pursuant to Section 64(3) (c) of the Act.

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 for six months?

Background and Evidence

The Landlord testified that this tenancy began approximately in February, 2013. No written tenancy agreement was completed but rent was established between the parties in the amount of \$550.00 payable by the Tenant on the first day of each month. No security deposit was paid by the Tenant.

The Landlord testified that the Tenant failed to pay rent for June, July and August, 2014, leaving an outstanding balance of \$1,650.00 as explained in the Landlord's written evidence.

As a result, the Landlord served the Tenant with the Notice on August 19, 2014 by attaching it to the Tenant's door. The Notice provided in written evidence, shows an effective date of vacancy of August 30, 2014 and the Landlord testified that the amount documented on the Notice of \$750.00 was a mistake and should have read \$1,650.00.

The Landlord further testified that the Tenant has also failed to pay rent for September, October and November, 2014 and seeks to now recover this amount, for a total of \$3,300.00 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.

I accept the Landlord's written and oral evidence that the Tenant was served with the Notice by attaching it to the Tenant's door on August 19, 2014. I also find that the Notice complied with the requirements of the Act.

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.

In the absence of any evidence from the Tenant to suggest otherwise, I find that the Tenant has failed to pay outstanding rent to the Landlord and has failed to dispute the Notice.

Therefore, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended in accordance with the effective date of the Notice. As a result, the Landlord is entitled to an Order of Possession effective two days after service on the Tenant as the effective date of vacancy has now passed.

I find that the Landlord is to be also awarded the rental arrears in the amount of **\$3,300.00** claimed. As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable to the Landlord is \$3,350.00.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$3,350.00**. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

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 13, 2014

Residential Tenancy Branch

