



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 the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on November 14, 2014. Canada Post tracking numbers were provided by the landlord in sworn testimony. The male tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

At the outset of the hearing the landlord testified that the female tenant passed away on October 06, 2014. As the tenants were co tenants named on the tenancy agreement the

tenancy continued with the male tenant only. Any Orders issued will be in the name of the male tenant.

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 to recover unpaid rent?

Background and Evidence

The landlord testified that this tenancy started on February 01, 2011. Rent for this unit is subsidized to an amount of \$635.00 per month due on the 1st of each month. The tenants paid a security deposit of \$477.50 on January 25, 2011.

The landlord testified that after the female tenant passed away the male tenant failed to pay rent for November, 2014. The landlord spoke with the male tenant and was informed that the tenant did not know what he was going to do. The landlord informed the tenant that he needed to notify the landlord of his intentions and if he was going to move out he needed to give the landlord written notice to end the tenancy. The landlord testified that no notice was received by the tenant. The landlord testified that Notice of Entry was posted for the alarm tests and upon entering the unit the landlord found that it appeared that some items had been removed from the unit but there are still a great deal of belongings in the unit so the landlord believes the tenant still has possession of the unit.

The landlord issued a 10 Day Notice to End Tenancy for unpaid rent and served this upon the tenant by posting it to the tenant's door on November 04, 2014. This Notice informed the tenant that he had five days to either pay the rent, or dispute the Notice. The Notice had an effective date of November 14, 2014. The landlord testified that no rent has been received by the tenant since the Notice was served.

The landlord seeks an Order of Possession effective two days after service and a Monetary Order to recover the unpaid rent of \$635.00 plus the \$50.00 filing fee.

Analysis

I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied with the undisputed evidence before me that the tenant has failed to pay rent for November, 2014 and the landlord is entitled to recover rent arrears to the sum of **\$635.00** pursuant to s. 67 of the *Act*.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

I have reviewed all documentary evidence and accept that the tenant has been served with Notice to End Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenant on November 07, 2014. The Notice states that the tenants have five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As the Notice is deemed served three days after it was posted to the door; the effective date of the Notice is amended to November 17, 2014 pursuant to s. 53 of the *Act*. I therefore grant the landlord an Order of Possession pursuant to section 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$685.00** which is comprised of unpaid rent and the filing fee. The Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the Respondent. This Order must be served on the Respondent and may be filed in the Supreme Court and enforced 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: December 15, 2014

Residential Tenancy Branch

