



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	OPR	(Landlord's Application)
	CNC, RR	(Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution made by the Tenant and an Application for Direct Request made by the Landlords.

The Landlords applied for an Order of Possession through the Direct Request proceedings based on an undisputed notice to end tenancy for unpaid rent. However, the Tenant did apply to dispute the notice to end tenancy and the Landlords application was directed to be heard with the Tenant's application in this participatory hearing.

However, the Tenant's application shows that the Tenant seeks to cancel a notice to end tenancy for cause and not for unpaid rent. The Tenant also applied to have rent reduced for repairs, services or facilities not provided.

One of the Landlords appeared for the hearing and provided affirmed testimony as well as written evidence which was originally submitted with the Landlord's application. However, the Tenant failed to appear for the 10 minute duration of the hearing and explain his application. The Landlord testified that he served the Tenant with his application by registered mail. As a result, I find that the Landlord served the Tenant in accordance with Section 89(1) (c) of the Act.

The Landlord explained that he still intended to seek an Order of Possession of the rental suite and wanted to keep the Tenant's security deposit in lieu of unpaid rent. As a result, I amended the Landlord's application to include this request pursuant to Section 64(3) (c) of the Act. However, the Landlord did not want to pursue a Monetary Order for unpaid rent as he had no intention of pursuing the Tenant for this amount.

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

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to keep all of the Tenant's security deposit in full satisfaction of outstanding rent?

Background and Evidence

The Landlord testified that this tenancy began on July 1, 2011 on a month to month basis. Monthly rent is payable under the written tenancy agreement in the amount of \$900.00 due on the first day of each month. The Tenant paid a \$450.00 security deposit at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenant started to pay only partial amounts of rent starting from January, 2014 onwards. The Landlord provided a detail breakdown of the outstanding rent for each month and testified that he had given the Tenant multiple chances to pay the rent each month. The Landlord explained that he did try and address this issue with a notice to end tenancy but explained that the notice served to the Tenant was not in the approved form as required by the Act.

The Landlord explained that by November 1, 2014 the Tenant was in rental arrears in the amount of \$4,050.00. 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 November 20, 2014 for the outstanding balance of rent. The Notice was provided as evidence and shows an effective date of vacancy of November 30, 2014 and was served to the Tenant in the presence of a witness who signed a Proof of Service document submitted in written evidence.

The Landlord further testified that the Tenant has also failed to pay rent for December, 2014 and the total amount of rent arrears is now \$4,950.00.

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 November 20, 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 Landlords **\$4,950.00** in unpaid rent. As the effective date of the Notice has now passed, the Landlords are entitled to an Order of Possession which is effective two days after service on the Tenant.

As the Landlords already hold **\$450.00** in the Tenant's security deposit, I order the Landlords to retain this amount in full satisfaction of the outstanding rent owed to the Landlords pursuant to Section 38(4) (b) of the Act.

Conclusion

For the reasons set out above, I grant the Landlords 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.

The Landlords are also granted permission to keep the Tenant's security deposit to satisfy the rental arrears outstanding in this tenancy.

As the Tenant failed to appear for the hearing and prove his 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: December 29, 2014

Residential Tenancy Branch

