



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MND, MNR, FF

Introduction

This matter 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 for unpaid rent and a breach of the tenancy agreement. The Landlord also applied for a Monetary Order for damage to the rental unit, for unpaid rent, and to recover the filing fee from the Tenants.

An agent for the Landlord and one of the Tenants appeared for the hearing and provided affirmed testimony. The Landlord provided a copy of the notice to end tenancy in written evidence and an incomplete copy of the written tenancy agreement.

Preliminary Issues

During the hearing the Landlord confirmed that he was not sure about how much partial rent the Tenants had paid to him for the November 2014 month. As a result, the Landlord was only requesting an Order of Possession for this hearing and explained that he would pursue the monetary claim at a later date. Therefore, I did not make any legal findings on the Landlord’s Application for damages to the rental suite and for unpaid rent.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on July 2, 2014 on a month to month basis. Rent under a written tenancy agreement is payable by the Tenants in the amount of \$700.00 on the second day of each month. The Tenants paid the Landlord \$350.00 as a security deposit on June 26, 2014.

The Landlord testified that the Tenants failed to pay rent on November 2, 2014. Following this period the Landlord testified that the Tenants paid him \$140.00 towards the November 2014 rent which left an outstanding balance of \$560.00.

As a result, the Landlord personally served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on November 28, 2014. The Notice was provided in evidence for this hearing and shows an expected date of vacancy of November 28, 2014 with an amount of \$560.00 due on November 2, 2014.

The Landlord testified that he has not received any rent from the Tenant since serving this Notice and the Tenants have also failed to pay rent for December 2014 and January 2015 since making this Application.

The Tenant acknowledged receipt of the Notice but was unable to confirm the date it was served to her. The Tenant testified that her boyfriend had paid the Landlord \$200.00 towards the November 2014 rent **nine** days after receiving the Notice and that this has re-instated the tenancy.

When the Tenant was asked about why December 2014 and January 2015 rent was still unpaid, the Tenant said that the Landlord had failed to do repairs to the rental suite, had turned off the heat, and that the Landlord was offered the rent but would not accept it.

The Landlord denied receiving or any offer of any rent money from the Tenant since the issuing of the Notice.

Analysis

I have considered the testimony and evidence provided by the parties on the balance of probabilities and I make the following determination.

Having examined the Notice, I find that the contents complied with the requirements of Section 52 of the Act. I accept the Landlord's testimony that the Tenant was personally served with the Notice on November 28, 2014 in accordance with Section 88(a) of the Act.

Section 53 of the Act allows the effective vacancy date of a Notice to be corrected if it does not account for the ten day time period a Tenant has to vacate the rental suite. Therefore, I correct the effective vacancy date of the Notice to December 8, 2014.

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 explain 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 effective date of the Notice. This requirement is also clearly stipulated on the first page of the Notice.

Therefore, the Tenants would have had until December 3, 2014 to pay **all** of the outstanding rent on the Notice or make an Application to dispute it. However, the Tenants did neither.

As a result, I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. As the corrected vacancy date of the Notice has now passed, the Landlord is entitled to an immediate Order of Possession.

As the Landlord has been successful in this matter, the Landlord is entitled to recover from the Tenants the **\$50.00 filing fee** for the cost of this Application. This amount may be deducted from the Tenants' security deposit, pursuant to Section 72(2) (b) of the Act.

Conclusion

For the above reasons, I grant the Landlord an Order of Possession effective **two days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenants fail to vacate the rental unit.

For the reasons above, the Landlord's Application for a Monetary Order is dismissed **with** leave to re-apply. The Landlord is granted the filing fee.

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: January 13, 2015

Residential Tenancy Branch

