



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 dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

The Landlord testified that he submitted a copy of the residential tenancy agreement to the Branch. As that document was not available at the hearing, he gave testimony as to the terms of the tenancy and stated as follows: the tenancy began July 1, 2014; monthly rent was payable in the amount of \$1,800.00; and, a security deposit of \$900.00 was paid on June 28, 2014.

The Tenants failed to pay the full amount of rent for the month of November 2014 leaving a balance owing of \$100.00. The Tenants also failed to pay rent for December 2014. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on December 15, 2014 indicating the amount of \$1,900.00 was due as of December 1, 2014 (the "Notice").

Based on the testimony of the Landlords, I find that the Tenants were personally served with the Notice on December 15, 2014.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, December 20, 2014. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. As December 20 was a Saturday, the Tenants had until December 22, 2014 to file an Application for Dispute Resolution.

The Tenants did not pay the outstanding rent, nor did they file their Application for Dispute Resolution within the five days.

The Landlord testified that that Tenants also failed to pay rent for January 2015 such that \$3,700.00 was owed as of the date of the hearing. The landlord also sought to recover the filing fee of \$50.00 for a total monetary claim of \$3,750.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent. In this situation the Tenants had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$3,750.00 comprised of rent owed in the amount of \$3,700.00 and the \$50.00 fee paid by the Landlord for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 27, 2015

Residential Tenancy Branch

