



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

The Tenant also applied for dispute resolution, although failed to attend the hearing. Accordingly, the Tenant's application is dismissed without leave to reapply.

Only the Landlords' agent, S.N., appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

S.N. testified the Tenant was personally served with the Notice of Hearing and their Application on January 14, 2015.

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

Has the Tenant breached the Act or tenancy agreement, entitling the Landlords to an Order of Possession and monetary relief?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement. The one year fixed term tenancy began May 1, 2014. Monthly rent was payable in the amount of

\$850.00. A security deposit and pet deposit in the total amount of \$550.00 was paid on May 1, 2014.

The Tenant failed to pay rent for the month of January 2015. The Landlords issued a 10 day Notice to End Tenancy for non-payment of rent on January 1, 2015 in which the amount of \$850.00 was noted as due as of January 1, 2015 (the "Notice").

Based on the testimony of S.N. I find that the Tenant was served with the Notice on January 5, 2015 by posting to the rental unit door. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of January 8, 2015. The effective date automatically corrects to January 8, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, January 13, 2015. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant filed a Tenant's Application for Dispute Resolution on January 12, 2015.

Analysis

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

The Tenant has not paid the outstanding rent and by failing to attend the hearing did not dispute the Notice. His application is dismissed and he is 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 Tenant must not withhold rent, even if the Landlords are in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

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

I find that the Landlords have established a total monetary claim of \$900.00 comprised of \$850.00 for rent for the month of January 2015 and the \$50.00 fee paid by the Landlords for this application.

I order that the Landlords retain the security deposit of \$550.00 in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of \$300.00.

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

Conclusion

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

The Landlords are 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 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 29, 2015

Residential Tenancy Branch

