



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANGEL REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent and for a Monetary Order for unpaid rent.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on January 02, 2015. Canada Post tracking numbers were provided by the landlord in documentary evidence. The 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*. This hearing was originally held as a Direct Request Proceeding. The matter was reconvened to a participatory hearing which required the landlord to serve the tenants with a Notice of Hearing for the reconvened hearing. The landlord's agent testified that the reconvened hearing documents were served upon the tenant by posting them to the tenant's door on January 22, 2015. The tenant is deemed to have been served the hearing documents on the third day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent 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. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlord's agent testified that this fixed term tenancy started on December 10, 2014 and was due to end on November 30, 2015. Rent for this unit is \$1,695.00 per month and is due on the 1st of each month. The rent for December, 2014 was prorated for 21 days to an amount of \$1,148.22.

The landlord's agent testified that the tenant failed to pay the rent due for December, 2014, leaving an unpaid balance of \$1,148.22. The landlord issued a 10 Day Notice to End Tenancy (the Notice) for unpaid rent on December 10, 2014. This was served by posting it to the tenant's door on that date. The Notice stated that the tenant owes rent of \$2,054.46 which also consisted of the security deposit which was unpaid and due on December 09, 2014. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on December 31, 2014. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has failed to pay rent for January and February, 2015 to an amount of \$3,390.00. The landlord seeks to amend their application to include unpaid rent for January and February.

The landlord requested an Order of Possession to take effect as soon as possible and a Monetary Order to recover the unpaid rent.

Analysis

Section 26 of the *Residential Tenancy Act (Act)* 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.*

Consequently, as the tenant has failed to attend the hearing to dispute the landlord's claim I find from the documentary evidence and testimony of the landlord's agent that the tenant has failed to pay rent for December, 2014 of \$1,148.22. Furthermore I am satisfied that the tenant failed to pay rent for January, 2015 of \$1,695.00 and for February, 2015 of \$1,695.00. I find as the tenant continues to reside in the rental unit that the landlord may amend their application to include unpaid rent for January and February, 2015 as the tenant would be aware that rent is due on the first of each month. However, as it is still close to the beginning of February and the landlord may still have the opportunity to re-rent the unit for the remainder of February, I must limit the landlord's claim for February to half a month's rent of \$847.50. Consequently, the landlord will receive a Monetary Order to the sum of **\$3,690.72** pursuant to s. 67 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice stated that the tenant had 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 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 this date has since passed I grant the landlord an Order of Possession effective two days after service upon the tenant, pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,690.72**. 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 landlord effective **two days** after service upon the Respondent. This Order must be served on the Respondent. If the Respondent fails to comply with this Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The landlord is at liberty to file a new application for loss of revenue if the unit remains unrented for the term of the tenancy.

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: February 04, 2015

Residential Tenancy Branch

