



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, ET, FF, O (Landlord)
 CNR (Tenant)

Introduction

This hearing dealt with cross applications. In the Landlord's Application for Dispute Resolution the Landlord sought an Order of Possession based on unpaid rent, an early end to tenancy and to recover the filing fee for the Application. The Tenant sought an Order canceling the Notice to End Tenancy issued for Unpaid Rent or Utilities issued on January 13, 2015.

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

1. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?
2. Should the Tenancy end early?
3. Should the Notice be cancelled?

Background and Evidence

The Landlord testified as to the terms of the tenancy and stated that the tenancy began February 12, 2014 with monthly rent payable in the amount of \$585.00 payable on the first of the month.

The Tenant failed to pay rent for the month of October 2014, November 2014, December 2014 and January 2015. The Tenant made partial payments on October 22, 2014 and December 18, 2014, but as of January 2015 the Tenant was in default of his rental payments in the amount of \$1,660.00. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on January 13, 2015 by posting to the rental unit door indicating the amount of \$1,660.00 was due as of January 1, 2015 (the "Notice").

Based on the testimony of the Landlord, I find that the Tenant was served with the Notice on January 13, 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 16, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, January 21, 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 Landlord testified that he attached a document titled "Rent Arrears Re-Cap for January 13, 2015" to the Notice; this document was also provided in evidence. The Tenant confirmed the figures noted on this document as well as testifying that he did not take any issue with the Landlord's claim for \$1,660.00 in outstanding rent. Finally, the Tenant conceded that the tenancy was going to end and that he was not able to pay the outstanding rent.

During the hearing, the Landlord agreed to the Tenant's request that the tenancy end on February 18, 2015 at 1:00 p.m.

The Landlord failed to adduce any evidence with respect to his request to end the tenancy early; accordingly, the Landlord's application for an Order pursuant to section 56(1) is dismissed.

Analysis

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

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. The Tenant has not paid the outstanding rent and although he applied to dispute the Notice, he conceded that he had no authority to withhold rent nor was he able to pay the outstanding rent.

The Tenant's application for an Order canceling the Notice is dismissed.

I find that the Landlord is entitled to an Order of Possession effective **February 18, 2015: the date agreed to by the parties**. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord, having been successful, is entitled to recover the \$50.00 filing fee and I grant the Landlord a Monetary Order in this amount pursuant to section 67. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The Landlord is granted leave to reapply for a further Monetary Order pursuant to sections 67 and 38(1)(d).

Conclusion

The Tenant failed to pay rent and did not 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 Tenant's application for an Order canceling the Notice is dismissed.

The Landlord is granted an Order of Possession, effective February 18, 2015 at 1:00 p.m., and is granted a Monetary Order in the amount of \$50.00. The Landlord is granted leave to reapply for a further Monetary Order.

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: February 10, 2015

Residential Tenancy Branch

