



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant's security deposit and to recover the filing fee for the cost of making the Application.

The Landlord appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. There was no appearance for the Tenant during the 17 minute duration of the hearing. As a result, I focused my attention to the service of the documents by the Landlord.

The Landlord testified that she served the Tenant with a copy of the Application and the Notice of Hearing documents by registered mail on January 19, 2015, pursuant to Section 89(1) (c) of the Act. The Landlord provided the Canada Post tracking number in oral evidence during the hearing which was noted on the inside cover of the file.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find that the Tenant was deemed served with the required documents on January 24, 2015 pursuant to the Act.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent for January and February 2015?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on November 1, 2014 for a fixed term due to end on October 31, 2015. The parties completed a written tenancy agreement which states rent is payable by the Tenant in the amount of \$825.00.

However, the Landlord testified that this amount was changed to \$850.00 payable on the first day of each month before the tenancy began; however, the Tenant did not initial the change on the tenancy agreement. The Landlord testified that the Tenant paid \$850.00 rent at the onset of the tenancy.

The Landlord testified that the Tenant paid a \$412.50 security deposit at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenant failed to pay rent on January 1, 2015. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 6, 2015 by attaching it to the Tenant's door. The Landlord provided a Proof of Service document signed by a witness who verified this method of service.

The Notice was provided into written evidence and shows an expected date of vacancy of January 16, 2015 due to \$850.00 in unpaid rent due on January 1, 2015.

The Landlord testified that the Tenant had failed to also pay for February 2015 rent. As a result, the Landlord now seeks an Order of Possession and a Monetary Order for two months of unpaid rent in the amount of \$1,700.00 as indicated on her Application.

Analysis

I have carefully considered the undisputed affirmed testimony and the documentary evidence of the Landlord in this decision as follows.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement. In this case, I accept the Landlord's undisputed oral evidence that the rent payable by the Tenant was in the amount of \$850.00 on the first day of each month.

Sections 46(4) and (5) of the Act states 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 date to which the Notice relates.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the Notice was served to the Tenant by attaching it to his door on January 6, 2015.

Section 90(c) of the Act provides that a document served by attaching to the door is deemed to have been received three days after being attached. Therefore, I find that the Tenant received the Notice on January 9, 2015.

Therefore, under the provisions of the Notice, the Tenant had until January 14, 2015 to pay the rent or make an Application to dispute the Notice. However, the Tenant did neither.

As a result, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective vacancy date of the Notice. Therefore, the Landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent.

As the Tenant was deemed to have received the Notice on January 9, 2015, pursuant to Section 53 of the Act I find that the vacancy date on the Notice is automatically corrected to January 19, 2015. However, as this corrected vacancy date has now passed, the Landlord is issued with an immediate Order of Possession.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the \$50.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,750.00 (\$1,700.00 + \$50.00).

As the Landlord already holds the Tenant's \$412.50 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded the outstanding balance of \$1,337.50.

Conclusion

The Tenant has breached the Act by failing to pay rent under the tenancy agreement.

As a result, the Landlord is granted an Order of Possession effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

The Landlord is allowed to keep the Tenant's security deposit.

The Landlord is also granted a Monetary Order for two months of unpaid rent in the amount **\$1,337.50**, pursuant to Section 67 of the Act. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

Copies of both orders for service and enforcement are attached to the Landlord's copy of this decision.

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 05, 2015

Residential Tenancy Branch

