



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 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, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord and his counsel, R.S., appeared at the hearing. The Landlord, through his counsel, was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

R.S. submitted that the Landlord personally served the Tenant with the Notice of Hearing and their Application Package on January 14, 2015; accordingly, I find the Tenant was duly served as of 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 Landlord to an Order of Possession and monetary relief?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement signed by the Tenant on October 24, 2014. Counsel for the Landlord submitted that the parties lost the original tenancy agreement and created a replacement in October of 2014. The tenancy agreement notes that the tenancy began on November 15, 2013. Further,

monthly rent was noted as payable in the amount of \$600.00 per month, payable on the 1st of the month. Counsel for the Landlord stated that \$550.00 of the Tenant's monthly rent was to be paid by social services directly, and the Tenant was responsible for paying the balance of \$50.00.

The Tenant failed to pay his \$50.00 share of the rent for the month of January 2014. Despite the Landlord's requests that the Tenant pay this amount, the Tenant did not pay the outstanding balance. A year later, and on January 3, 2015 the Landlord issued a 10 day Notice to End Tenancy for non-payment of rent indicating the amount of \$73.50 was due as of January 1, 2015 (the "Notice"). The Landlord noted on the Notice, that the \$73.50 was comprised of the \$50.00 outstanding rent from January 2014; \$20.00 the Landlord says the Tenant borrowed from him; and, \$3.50 for key replacement.

Based on the submissions of R.S., I find that the Tenant was personally served with the Notice on January 3, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, January 8, 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 was informed that the alleged loan of \$20.00 was not sufficiently related to the tenancy to be recoverable under the *Residential Tenancy Act*. The Landlord also confirmed that he did not have a receipt, or evidence to support the request for \$3.50 for the key replacement.

R.S. submitted that the Tenant failed to pay the \$600.00 in rent for February 2015 such that the total amount sought by the Landlord was \$650.00 in addition to the \$50.00 filing fee.

Analysis

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

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is 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 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. In this situation the Tenant 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 Tenant. 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 \$700.00 comprised of \$50.00 for January 2014, \$600.00 for February 2015 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 Tenant failed to pay rent and did not file 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 Landlord is granted an order of possession and is granted a 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 05, 2015

Residential Tenancy Branch

