



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF
 MT, CNR, ERP

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for more time to dispute a notice ending the tenancy, for an order cancelling a notice to end tenancy for unpaid rent or utilities and for an order that the landlord make emergency repairs for health or safety reasons.

An agent for the landlord attended the hearing and gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents personally on January 27, 2015, and despite making an application for dispute resolution which is scheduled to be heard with the landlord's application, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord's agent. The landlord's agent testified that the documents were served on that date and in that manner by the landlord's agent, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Since the tenant has not attended the hearing, the tenant's application is hereby dismissed without leave to reapply.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?

- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord's agent testified that the rental unit had been rented to a different tenant, who had pre-paid rent to the end of December, 2014. That tenant moved out of the rental unit without notice to the landlord at the beginning of October, 2014 and this tenant moved into the rental unit on or about October 25, 2014. Rent in the amount of \$775.00 per month was payable in advance on the 1st day of each month, however no written tenancy agreement exists. The landlord did not collect a security deposit from the tenant, but collected \$350.00 from the first tenant at the beginning of that tenancy which was returned to that tenant.

The tenant was supposed to pay rent for October, 2014 but failed to do so and the landlord wants to reimburse the first tenant for that payment.

The landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 13, 2015 by personally handing it to the tenant. The tenant retaliated by smashing the window of the landlord's agent. A copy of the notice has been provided and it is dated January 13, 2015 and contains no expected date of vacancy; that field on the form has been left blank. The notice states that the tenant failed to pay rent in the amount of \$1,200.00 that was due on October 1, 2014 and the landlord's agent testified that the amount includes the unpaid security deposit.

The tenant moved out of the rental unit on or about February 7, 2015 but has left some items behind. The landlord's agent requests an Order of Possession to ensure that the landlord has a legal document showing that the landlord has legal possession and the tenant is not entitled to possession of the rental unit.

Analysis

The *Residential Tenancy Act* permits a tenant to dispute a notice to end the tenancy for unpaid rent or utilities within 5 days of service or pay the rent in full within that 5 day period. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the tenant disputed the notice but not within the time required under the *Act*. Having dismissed the tenant's application, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession.

With respect to the monetary claim, the landlord is not owed any rental arrears. The landlord seeks a monetary order so that the landlord can reimburse the first tenant, however the jurisdiction of the *Residential Tenancy Act* is against a landlord and a tenant. Having found that the landlord is not owed any money, I am not satisfied that the landlord is entitled to a monetary order under the Act for rental arrears. The first tenant did not provide notice to move out and the landlord has kept all of the rent money. I leave it to the tenants to apportion any rent money paid or owed by either of them. However, the landlord's agent testified that the tenant departed on February 7, 2015 and did not pay rent for February, 2015, and I find that the landlord would not have been able to re-rent the rental unit prior to February 15, 2015 and the landlord is entitled to half a month's rent, or \$387.50.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an immediate Order of Possession in favour of the landlord.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Sections 67 and 72 of the *Residential Tenancy Act* in the amount of \$437.50.

This order is final and binding and may be enforced.

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 11, 2015

Residential Tenancy Branch

