



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MURRY HILL DEVELOPMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

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 March 03, 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*.

The landlord 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, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

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?

Background and Evidence

The landlord testified that this tenancy started originally in November, 2010 and was renewed on November 01, 2014 for a fixed term tenancy that is due to expire on April 30, 2015. Rent for this unit is \$820.00 per month due on the 1st of each month.

The landlord testified that the tenant failed to pay rent for February, 2015 on the day it was due. A 10 Day Notice to End Tenancy for unpaid rent (the Notice) was served upon the tenant by posting it to the tenant's door and sending a copy by registered mail on February 10, 2015. A copy of the Notice has been provided in documentary evidence. The Notice states that the tenant owed rent of \$820.00 due on February 01, 2015. The Notice informed the tenant that he had five days to either pay the outstanding rent or file an application to dispute the Notice or the notice will be effective on February 23, 2014 and the tenant must vacate the rental unit.

The landlord testified that the tenant did not pay the outstanding rent with five days but did pay the full amount on February 27, 2015. The landlord issued a receipt to the tenant for use and occupancy only and the landlord was not reinstating the tenancy.

The landlord seeks an Order of Possession effective immediately and seeks to recover the filing fee of \$50.00.

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 that the tenant failed to pay rent for February on the day it was due.

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 and grant the landlord an Order of Possession pursuant to s. 55 of the *Act*.

The tenant has since paid the outstanding rent and the landlord has informed the tenant that it has been accepted for use and occupancy only and by accepting the rent the landlord does not intend to reinstate the tenancy. The landlord therefore has no claim for a Monetary Order for unpaid rent for February, 2015.

The landlord is entitled to recover the **\$50.00** filing fee from the tenant, pursuant to s. 72(1) of the *Act*.

Conclusion

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.

I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlord retain this amount from the security deposit of

\$410.00 leaving a balance \$360.00 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

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: April 02, 2015

Residential Tenancy Branch

