



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 and utilities, and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified they served the Tenant with the Notice of Hearing and their Application on March 10, 2015, by posting it to the rental unit door. Under the Act documents served this way are deemed served three days later. I find the Tenant was duly served although he did not attend the hearing.

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.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession and monetary relief?

Preliminary Issues

The Landlord had missed a portion of their address and the rental unit address on their Application; however, the address was correct on the 10 day Notice to End Tenancy served on the Tenant. Therefore, I allow the Landlord to amend their Application to include the correct address on the Application.

Background and Evidence

Based on the testimony of the Landlord, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on January 13, 2015 by posting it to the door (the "Notice").

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. 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 the monthly rent was \$750.00 and was due on the first day of the month. The Landlord testified that the Tenant only paid \$650.00 in November of 2014 and has not paid any rent since. The Landlord is claiming \$100.00 in rent for November 2014, and \$750.00 per month for each of the following months: December 2014, January, February, March and April of 2015.

The Landlord was also claiming for unpaid utility bills, although they had not submitted the utility bills.

Analysis

Based on the above, the testimony 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 I find there is no evidence that the Tenant had any authority under the Act to not pay rent.

Therefore, 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 further find that the Tenant has not paid rent for April 2015 rent, which was not included in the March 2015 Application of the Landlord, and the Tenant was aware that rent was due for April, and that the Landlord will suffer a loss of rent for that month. Therefore, I allow the claim to be amended to include one additional month of rent.

As the Landlord provided no evidence of what was owed on the utilities, the claims of the Landlord in regard to utilities are dismissed with leave to reapply.

This leads me to find that the Landlord has established a total monetary claim of **\$3,900.00** comprised of \$100.00 in rent for November 2014, and \$750.00 for each of

December 2014, and January, February, March and April of 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.

The claims of the Landlord in regard to utilities are dismissed with leave to reapply.

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 for the balance of rent due.

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: April 09, 2015

Residential Tenancy Branch

