



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUNTINGDON APARTMENTS
and [tenant name suppressed to protect privacy]

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.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

At the outset of the hearing the Landlord confirmed that the Tenant did not pay a security deposit. Accordingly, the application for an Order to retain the security deposit pursuant to section 38 is dismissed.

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

The Landlord confirmed that although a residential tenancy agreement had been prepared and signed by the Landlord, the Tenant failed to sign and return the agreement. The Landlord provided affirmed testimony as to the tenancy and stated that the tenancy began on November 15, 2015 and monthly rent was payable in the amount of \$715.00 per month payable on the first of the month.

The Tenant failed to pay rent for the month of March 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on March 2, 2015 indicating the amount of \$715.00 was due as of March 1, 2015 (the "Notice").

Based on the testimony of A.L., and the Proof of Service Notice to End Tenancy entered in evidence, I find that the Tenant was served with the Notice on March 2, 2015 by personal service.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, March 7, 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 Tenant did not pay the rent, nor did he file to dispute the Notice.

The Landlord testified that the Tenant also failed to pay rent for April 2015, such that the Landlord sought a Monetary Order for \$1,480.00 including \$1,430.00 for unpaid rent in addition to the \$50.00 fee paid to file the application.

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 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 \$1,480.00 comprised of \$1,430.00 in unpaid rent 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 for the rent due as well as the filing fee.

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 14, 2015

Residential Tenancy Branch

