



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, 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; For an Order of Possession for cause; for a Monetary Order for unpaid rent; 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 23, 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's agent 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 an Order of Possession for cause?

- Is the landlord entitled to a Monetary Order?

Background and Evidence

The landlord's agent (the landlord) testified that this month to month tenancy started on July 01, 2013. Rent for this unit is \$700.00 per month plus 50 percent of utilities. Rent is due on the first of each month.

The landlord testified that the tenant failed to pay the rent for February and March, 2015. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on March 23, 2015. This was posted to the tenant's door on that date. The Notice informed the tenant that the tenant had five days to either pay the outstanding rent of \$700.00, apply for Dispute Resolution or the tenancy would end on March 31, 2015. The tenant did not pay the outstanding rent or file an application to dispute the Notice. Another 10 Day Notice was served upon the tenant for outstanding rent for April, 2015. The landlord testified that no rent has been received from the tenant and the landlord seeks to recover \$2,100.00.

The landlord testified that the tenant has failed to pay her share of the utilities. The upper tenant receives the bills and then asks the tenant for her 50 percent share. To date the tenant owes 350.00 as indicated on the 10 Day Notice to End Tenancy. The landlord agreed that copies of the bills have not been provided to the tenant.

The landlord testified that the tenant allowed her boyfriend to reside in the rental unit. Her boyfriend has accumulated a lot of junk and scrap metal at the property in the carport. The tenant was sent a warning letter about this and her boyfriend then put up a temporary structure at the side of the house and filled it with this junk and scarp metal. The City bylaw officer has issued a Notice to the landlord about these items as the city does not allow this sort of mess at the property and it is in contravention of the bylaws. The landlord has been fined \$175.00 by the City. A copy of the bylaw notice has been

provided in documentary evidence showing the fine of \$175.00. The landlord seeks to recover this amount from the tenant.

The landlord seeks an Order of Possession to take effect as soon as possible.

The landlord testified that the tenant was also served with a One Month Notice to End Tenancy for cause. This Notice was served in person on February 15, 2015. The Notice has an effective date of February 15, 2015 and gave the following reasons to end the tenancy:

- *The tenant is repeatedly late paying rent.*
- *The tenant or a person permitted on the residential property by the tenant has*
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
 - (iii) Put the landlord's property at significant risk;*
- *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (i) Damaged the landlords' property*
 - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
 - (iii) Jeopardized a lawful right or interest of another occupant or the landlord*
- *The tenant has caused extraordinary damage to the unit/site or property*
- *The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*
- *The tenant has assigned or sublet the rental unit without the landlords' written consent*

- *The tenant knowingly gave false information to prospective tenants or purchaser of the rental unit/site or property/park*
- *The rental unit/site must be vacant to comply with a government Order.*

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which 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.

I am satisfied from the undisputed evidence before me that there is outstanding rent for February, March and April, 2015 of **\$2,100.00**. Consequently, it is my decision that the landlord is entitled to recover this amount from the tenant and will receive a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the landlord's claim to recover \$350.00 for utilities; the landlord must provide the tenant with a copy of the utility bills and a written demand for payment within 30 days before the landlord can seek a Monetary Order to recover utilities. Furthermore when this is a shared unit under one utility account the utilities should be in the landlord's name and not that of the upper tenants as the responsibility for collection of utilities falls to the landlord. As the landlord has not provided the utility bills either in evidence or to the tenant with a written demand for payment I must dismiss this section of the landlord's claim with leave to reapply.

With regard to the landlord's claim for the bylaw fine of \$175.00; the landlord has included details of this portion of their claim in their evidence package and I am satisfied that the tenant would therefore be aware that the landlord was seeking to recover this

amount although the landlord failed to select that section of the application. If the landlord incurred a fine from the City because the tenant did not comply with the landlords warning letter to remove the junk and scrap from the side of the unit then the landlord is entitled to recover any fines from the tenant. I therefore find the landlord is entitled to recover the amount of **\$175.00** from the tenant pursuant to s. 67 of the *Act*.

As the landlords claim has merit, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlords will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$2,100.00
Bylaw fine	\$175.00
Filing fee	\$50.00
Total amount due to the landlords	\$2,325.00

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 states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been served on March 26, 2015 and the effective date of the Notice is amended to April 05, 2015 pursuant to s. 53 of the *Act*. There is no evidence to show that the tenant paid the outstanding rent within five days nor did the tenant apply to dispute the Notice to End Tenancy 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. As this date has since passed I grant the landlord an Order of Possession effective two days after service upon the tenant, pursuant to s. 55 of the *Act*.

As I have granted an Order of Possession based on the 10 Day Notice to End Tenancy for unpaid rent I am not required to deal with the landlords' claim for an Order of Possession for cause.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,325.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondent and is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days after service upon the tenant**. This Order must be served on the Respondent and may be filed in the Supreme Court and enforced as an Order of that Court.

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: May 01, 2015

Residential Tenancy Branch

