



Dispute Resolution Services

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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 to recover the filing fee for the Application.

Only the Landlord, agent, S.A., appeared at the hearing. S.A. gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

S.A. testified served the Tenant with the Notice of Hearing and their Application on April 2, 2015 by registered mail; S.A. also provided the registered mail tracking number in evidence. Under section 90 of the *Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of April 7, 2015.

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

S.A. confirmed that no written tenancy agreement existed. S.A. testified that based on the information she received from the Landlord, the terms of the tenancy were as follows: the tenancy began four years ago; monthly rent was \$1,175.00 per month.

S.A. further testified as to the outstanding rent as follows: the Tenant's February 2015 rent cheque was returned N.S.F., such that the Tenant owed the Landlord \$25.00 for February; the Tenant also owed \$1,175.00 per month for March, April and May, 2015.

After 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 indicating the amount of \$1,200.00 was due as of March 1, 2015 (the "Notice").

Based on the testimony of S.A., I find that the Tenant was personally served with the Notice on March 18, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, March 23, 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.

S.A. testified that the Tenant did not pay the April or May rent when due, but did make a payment of \$1,170.00 on April 6, 2015; introduced in evidence was a receipt for the April 6, 2015 cash payment.

In total the Landlord sought the sum of \$2,380.00 for unpaid rent in addition to the filing fee of \$50.00 for a total Monetary Order in the amount of \$2,430.00.

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 **\$2,430.00** comprised of unpaid rent in the amount of \$2,380.00 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, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance 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: May 13, 2015

Residential Tenancy Branch

