



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied: to keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee for the cost of making the Application.

The Landlord appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing including a copy of the notice to end tenancy. There was no appearance by the Tenant during the 12 minute duration of the hearing. As a result, I focused my attention to the service of the documents by the Landlord.

The Landlord testified that he served the Tenant with a copy of the Application and the Notice of Hearing documents by registered mail on April 14, 2015. The Landlord provided the Canada Post tracking number and receipt into written evidence to support this method of service. The Canada Post website indicates that the Tenant received and signed for the documents on April 17, 2015. Therefore, based on the undisputed evidence of the Landlord I find the Tenant was served with the required documents by registered mail on April 17, 2015 pursuant to Section 89(1) (c) of the Act. As a result, I continued to hear the undisputed evidence of the Landlord as follows.

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?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on January 13, 2015 on a month to month basis. The parties completed a written tenancy agreement and rent is payable by the Tenant in the amount of \$1,250.00 on the first day of each month. The Tenant paid the Landlord a \$625.00 security deposit at the start of the tenancy which he retains.

The Landlord testified that the Tenant failed to pay rent on April 1, 2015. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on April 2, 2015 by attaching it to the door. The Landlord provided a Proof of Service document which was signed by a witness who verified this method of service. The Notice was provided into written evidence and shows an expected date of vacancy of April 11, 2015 due to \$1,250.00 in unpaid rent due on April 1, 2015.

The Landlord made his Application on April 14, 2015. The Landlord testified that the Tenant approached him with the full rent for April on April 28, 2015. The Tenant informed him that she was making an application to social services for assistance in paying rent but that she needed a receipt from him in order to further her application so that she could pay May 2015 rent.

The Landlord testified that he agreed with the Tenant that he would accept the rent and that he would provide her with a note to apply for rental assistance for May 2015. The Landlord testified that he made it clear to the Tenant that if she failed to pay rent for May 2015 he would still proceed with this hearing and his Application to end the tenancy.

The Landlord testified that the Tenant failed to pay rent for May 2015 in the amount of \$1,250.00. The Landlord called the Tenant several times to see where the rent was and what had transpired with the Tenant's application for rental assistance. However, the Tenant did not respond. As a result, the Landlord now seeks an Order of Possession and a Monetary Order for unpaid rent in the amount of \$1,250.00.

Analysis

Having examined the Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's oral and written evidence that the Notice was served to the Tenant by attaching it to the door on April 2, 2015. Section 90(c) of the Act allows documents served in this manner to be deemed served three days later. Therefore, I find that the Tenant received the Notice on April 5, 2015 pursuant to the Act.

As a result, the Tenant had until April 10, 2015 to pay the rent or make an Application to dispute the Notice. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

I find the Tenant failed to pay rent or dispute the Notice within the above time limit. However, the Tenant did pay full rent after the five day time limit on April 28, 2015. I find the Landlord's oral testimony is sufficient evidence for me to determine that by accepting full rent after the five day time limit had expired, the Landlord did not re-instate the tenancy. I accept the Landlord's oral evidence that he put the Tenant on notice that the rent was being accepted on a use and occupancy only basis and that the Landlord was still seeking to end the tenancy as he had made an Application for this after the five day time limit had expired.

I also find that the rent for April 2015 was accepted on the basis that the Tenant would advance an application for rental assistance to pay May 2015 rent which the Landlord had also made a claim for in this Application. However, the Tenant failed to do so and this resulted in rental arrears for May 2015 rent.

Accordingly, I find the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent. As the month of April has now passed and the Tenant has not paid for May 2015 rent, the Order of Possession issued to the Landlord is effective two days after service on the Tenant. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court as an order of that court.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the \$50.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,300.00 (\$1,250.00 + \$50.00).

As the Landlord already holds the Tenant's \$625.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance of \$675.00. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court. Copies of the both orders for service and enforcement are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has breached the Act by not paying rent in accordance with the written tenancy agreement. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenant.

The Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the remaining amount of unpaid rent and the filing fee of \$675.00.

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 27, 2015

Residential Tenancy Branch

