



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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.

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 tenancy began February 1, 2015, although the Landlord testified that the Tenant moved in on January 26, 2015. Monthly rent was payable in the amount of \$725.00 on the first of the month and a security deposit in the amount of \$325.00 was paid at the beginning of the tenancy.

The Tenant failed to pay rent for April 1, 2015. The Landlord issued and personally served a 10 day Notice to End Tenancy for non-payment of rent on April 15, 2015 indicating the amount of \$725.00 was due as of April 1, 2015 (the "Notice").

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, April 21, 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 apply to dispute the Notice. She confirmed during the hearing that she had made arrangements to move from the rental unit.

The Landlord testified that she received two cheques from a Provincial government source in the amount of \$570.00 each on May 6, 2015 such that she received the sum of \$1,140.00 towards the \$1,450.00 owing for April and May rent, leaving \$310.00 owing. The Landlord further testified that the Tenant did not pay rent for June 2015 such that the Landlord sought monetary compensation for outstanding rent in the amount of \$1,035.00. The Tenant confirmed this amount was owed for outstanding rent.

The Landlord also sought monetary compensation for \$80.00 for charges she says the Tenant made to her cable TV account by renting movies. The Tenant denied making these charges and stated that her cable was included in her rent.

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.

The Landlord confirmed that no tenancy agreement existed. The parties disagreed as to whether the Tenant was required to pay the cable utility charges over and above the basic charges. Where the parties conflict on such an issue, and without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. As the Landlord bears the burden of proving the Tenant was responsible for these charges, and has failed to meet that burden of proof, I deny the Landlord's claim for compensation for the \$80.00 in extra cable charges.

The Tenant did not dispute the Landlord's claim with respect to outstanding rent in the amount of \$1,035.00. Accordingly, I find that the Landlord has established a total monetary claim of \$1,085.00 comprised of outstanding rent in the amount of \$1,035.00 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$325.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$760.00**.

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 the outstanding 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: June 08, 2015

Residential Tenancy Branch

