



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASTORIA HOTEL
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.

Only the Landlord's agent, B.L., appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he personally served the Tenant with the Notice of Hearing and their Application on June 1, 2015 at 4:30 p.m. and that this service was witnessed by a third party, L.S. I accept the Landlord's undisputed testimony and find the Tenant was duly served as of June 1, 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

The Landlord testified as to the terms of the tenancy and stated as follows: the tenancy began January 19, 2011. Monthly rent was payable in the amount of \$375.00 on the

19th of the month. A security deposit in the amount of \$187.50 was paid on or before the start of the tenancy.

The Landlord testified that at the time of the hearing, the monthly rent was \$432.00. The Tenant failed to pay rent for the month of April 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on May 2, 2015 indicating the amount of \$432.00 was due as of April 19, 2015 (the "Notice").

Based on the Landlord's testimony of, I find that the Tenant was served with the Notice on May 2, 2015 by posting to the rental unit door. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of May 5, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, May 10, 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 Landlord testified that the Tenant paid the outstanding rent for April 2015 on May 25, 2015. The Landlord issued a receipt to the Tenant for this payment indicating it was for "use and occupancy only" as the Landlord did not wish to reinstate the tenancy.

The Landlord further testified that the Tenant failed to pay rent on May 19, 2015 in the amount of \$432.00 or on June 19, 2015 in the amount of \$432.00 such that at the time of the hearing, the Landlord sought monetary compensation for the sum of \$864.00 in outstanding rent in addition to recovery of the filing fee of \$50.00 for a total of \$914.00.

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 \$914.00 comprised of outstanding rent in the amount of \$432.00 for May 2015, and \$432.00 for June 2015 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$187.50 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$726.50.

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: July 09, 2015

Residential Tenancy Branch

