



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, 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 appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his/her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified served each Tenant individually with the Notice of Hearing and their Application on June 3, 2015 by registered mail. He provide the registered mail tracking numbers. Under the Act documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of June 8, 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.

Preliminary and Procedural Matters

At the outset of the hearing, the Landlord testified that the Tenants vacated the rental since filing his application. As a result, the Landlord requested to withdraw their request for an order of possession as the Tenant had already given up possession of the rental unit.

Issues to be Decided

Has the Tenant breached the Act or tenancy agreement entitling the Landlord to monetary relief?

Background and Evidence

The Landlord testified as to the terms of the tenancy. He said that the tenancy began November 1, 2014. Monthly rent was payable in the amount of \$600.00. A security deposit in the amount of \$300.00 was paid at the start of the tenancy.

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 12, 2015 indicating the amount of \$1,200.00 was due for April and May 2015 rent (the "Notice").

Based on the testimony of the Landlord, I find that the Tenant was personally served with the Notice on May 12, 2015. Also introduced in evidence was a Proof of Service confirming the service of the Tenants was witnessed by a third party. Accordingly, I find that the Tenants were served with the Notice as of May 12, 2015.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, May 17, 2015. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord confirmed the Tenants did not pay the outstanding rent, nor did they make an application to dispute the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are 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 Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent. In this situation the Tenants had no authority under the Act to not pay rent.

I find that the Landlord has established a total monetary claim of \$1,250.00 comprised of \$600.00 for April 2015 rent, \$600.00 for May 2015 rent and the \$50.00 fee paid by the Landlord for this application. Accordingly, I grant the Landlord an Order under section 67 for the amount of **\$1,250.00**. 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 rent and did not file to dispute the Notice to End Tenancy. The Landlord is granted a Monetary Order for the outstanding rent of \$1,200.00 and the \$50.00 filing fee.

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 10, 2015

Residential Tenancy Branch

