



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant

Both parties appeared gave 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 at the hearing.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began on January 14, 2006. Rent is \$899.00 per month payable on the first of each month. The tenant's rent contribution is geared to income and the tenant's portion is currently \$474.00

The landlord's agent testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on May 7, 2015, for rent that was due on May 1, 2015, in the amount of \$474.00.

The landlord's agent testified that the rent for May 2015 was paid on June 6, 2015, and they issued a receipt for use and occupancy. Filed in evidence is a copy of the receipt.

The landlord testified that the tenant has not paid any rent for June 2015 and July 2015. The landlord requested to amend their application to include subsequent unpaid rent in the amount of \$948.00.

The tenant testified that they received the Notice during the first couple of weeks of May 2015. The tenant stated that they did not pay rent within 5 days and did not file an application for dispute resolution.

The advocate for the tenant stated that in a “general sense” they are not sure of the tenant’s mental capacity to fully understand the notice to end tenancy. The advocate stated that the tenant has been unemployed due to medical issues, with anxiety and other issues.

The advocate stated that the landlord is not acting in goodwill and is not co-operating with the ministry, as the ministry will not pay rent when the tenancy status is under eviction. The advocate stated that this matter should be resolved by settlement discussion.

The landlord’s agent stated that they are not willing to enter into a settlement discussion to continue the tenancy. The agent stated that it is not their responsibility to work with the ministry. The agent stated that they have been working with the tenant since the tenancy started and the tenant has been told that it is their responsibility to ensure rent is paid on time. The agent stated that tenant has not paid rent for two months and they are no longer willing to continue the tenancy.

Analysis

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

Although the advocate stated that they are not sure of the tenant’s mental capacity and is providing this information in a “general sense”, I find that is not sufficient as no medical evidence from a medical profession was provided.

Further, the tenant provided evidence that they received the Notice during the first two weeks of May 2015. The tenant acknowledged they did not pay rent within five days and acknowledged that they did not make an application for dispute resolution.

While the advocate believes the landlord has an obligation to co-operate with a third parties such as the ministry, that is not a requirement under the Act.

Section 26 (1) of the Act states a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46(1) of the Act states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

In this case the tenant acknowledged that they received the Notice. The tenant did not paid the outstanding rent within five days 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.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, 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.

Although the landlord collected rent for May 2015 on June 6, 2015, the landlord issued a receipt for use and occupancy, which means the landlord was not reinstating the tenancy. The tenant has not paid any subsequent rent for June 2015 and July 2015.

At the outset of the hearing the landlord requested to amend their application to include loss of rent for June 2015 and July 2015. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlord's application is amended to include a claim for unpaid rent for those two months.

The evidence of both parties supports that the tenant did not pay rent for June 2015, and July 2015, I find that the landlord has established a total monetary claim of **\$998.00** comprised of unpaid rent for June 2015, July 2015 and the \$50.00 fee paid by the landlord for this application. I grant the landlord an order pursuant to section 67 of the Act. 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. 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 and a monetary order.

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: July 13, 2015

Residential Tenancy Branch

