



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an Order of Possession for unpaid rent or utilities, a Monetary Order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The Landlord attended the teleconference hearing. During the hearing the Landlord was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the Tenant did not attend the hearing, service of the Landlord's Application and Notice of a Dispute Resolution Hearing (the "Application Materials") was considered. The Landlord testified that the Application Materials were served on the Tenant by registered mail on June 23, 2015. Pursuant to section 90 of the *Act*, documents served in this way are deemed served five days later. accept the Landlord's undisputed testimony and find that the Tenant was served as of June 28, 2015.

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

Introduced in evidence was a copy of the residential tenancy agreement indicating the tenancy began September 10, 2014. Monthly rent was payable in the amount of \$1,000.00. A security deposit in the amount of \$500.00 was paid on September 10, 2014.

The Tenant failed to pay rent for the month of June 2014. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on June 2, 2014 indicating the amount of \$1,000.00 was due as of June 1, 2014 in addition to utilities in the amount of \$803.19 (the "Notice").

Based on the testimony of the Landlord, I find that the Tenant was served with the Notice on June 2, 2015 by posting to the rental unit door. The Landlord also provided a proof of service which indicates the service was witnessed by D.S. 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 June 5, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, June 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 failed to pay rent for July and August when due, yet paid all outstanding utilities and rent on August 12, 2015. The Landlord confirmed that at the time of the hearing no amount was owing by the Tenant to the Landlord.

The Landlord testified that she did not re-establish the tenancy and that all receipts issued to the Tenant for his August 12, 2015 payment indicated that they were for "use and occupation only" and "does not re-instate tenancy".

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 is entitled to recover the \$50.00 fee paid by the Landlord for this application. I order that the Landlord retain \$50.00 from the security deposit to compensate the Landlord for the filing fee.

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 \$50.00 from the security deposit as recovery of the 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: August 18, 2015

Residential Tenancy Branch

