



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA GROUP OF SOCIETIES
and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>	OPR, MNR, MNSD, MNDC, FF (Landlord's Application) DRI, CNR, RR, FF (Tenant's Application)
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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.

The Tenant also applied for dispute resolution, although failed to attend the hearing. Accordingly, the Tenant's application is dismissed without leave to reapply.

The Landlord's Regional Property Manager, L.H., as well as the Landlord's Tenant Relations Liason, J.C., and Maintenance staff, A.L. appeared at the hearing. L.H. gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

L.H. testified she personally served the Tenant with the Notice of Hearing and their Application on June 26, 2015 as well as sending the Application Materials by registered mail on that same date. A copy of the registered mail receipt and tracking number was provided in evidence. Under the Act documents served this way are deemed served 5 days later; however, I accept the Tenant was also personal served and find that the Tenant was duly served as of the earlier date: June 26, 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

L.H. testified that the tenancy began November 1, 2009. A portion of the Tenant's rent was subsidized such that at the beginning of the tenancy, monthly rent was payable in the amount of \$404.00. L.H. testified that at the time of the hearing monthly rent was \$850.00 per month as the Tenant was now responsible for paying full market value. Evidence of the increase in rent was provided by the Landlord. L.H. confirmed that a security deposit in the amount of \$318.00 was paid on November 3, 2009.

L.H. testified that as of June 1, 2015 the Tenant was in arrears of rent in the amount of \$3,342.00. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on June 5, 2015 in which the amount of \$3,342.00 was noted as due as of June 1, 2015 (the "Notice").

L.H. testified that the Notice was served on the Tenant by putting through the mail slot. 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 4, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, June 9, 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 filed a Tenant's Application for Dispute Resolution on July 3, 2015. Although she applied for more time pursuant to section 66(1), she did not attend the dispute resolution hearing.

L.H. testified that the Tenant also did not pay rent for July or August, although a payment of \$218.00 was made on July 9, 2015 such that at the time of the hearing, the sum of \$4,824.00 was outstanding for rent. The Landlord also sought recovery of the filing fee.

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 attend to dispute the Notice. She 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 \$4,874.00 comprised of the following:

owing as of the date of the Notice	\$3,342.00
Owing for July 2015	\$850.00
Owing for August 2015	\$850.00
total	\$5,042.00
<i>Less payment July 9, 2015</i>	\$218.00
Total	\$4,824.00
Filing fee	\$50.00
Total	\$4,874.00

I order that the Landlord retain the security deposit of \$318.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$4,556.00**.

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 attend 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 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 26, 2015

Residential Tenancy Branch

