



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, 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 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 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 his Application on October 23, 2015; accordingly, I find the Tenant was duly served with notice of this application.

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. He stated that the tenancy began January 2011. Monthly rent was payable in the amount of \$530.00 which included \$30.00 for satellite television.

The Landlord testified that the Tenant owed \$230.00 for rent for September 2015 and on October 3, 2015, the Landlord issued a 10 day Notice to End Tenancy for non-payment of rent (the "Notice").

Based on the testimony of the Landlord and the Proof of Service—Notice to End Tenancy filed in evidence, I find that the Tenant was personally served with the Notice on October 3, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, October 8, 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 did not file to dispute the Notice, and did not pay the rent in full by October 8, 2015 as required by the Act.

The Landlord testified that as of the date of the hearing there was no outstanding rent as the Tenant paid the rent in full as of 2-3 days prior to the hearing. The Landlord confirmed he did not reinstate the tenancy and issued receipts "for use and occupancy only".

Analysis

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

The Tenant did not pay the outstanding rent and did not apply to dispute the Notice within the five days prescribed by the Act 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.

Should the Landlord wish to create a new tenancy with the Tenant, he is at liberty to do so; however, this tenancy is ended.

As the Landlord has been successful, I grant his request to recover the filing fee. I find that the Landlord has established a total monetary claim of \$50.00 comprised of the fee paid by the Landlord for this application and I authorize the Landlord to retain \$50.00 from the Tenant's security deposit of \$250.00.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy within the five days required by the Act. 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 may keep \$50.00 from the Tenant's security deposit.

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: November 23, 2015

Residential Tenancy Branch

