



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF (Landlord's Application)
 CNR, OLC (Tenant's Application)

Introduction

This hearing dealt with cross applications. In the Application for Dispute Resolution by the Landlord he indicated he sought an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent and to recover the filing fee for the Application. The Tenant sought an Order canceling the Notice and an order that the Landlord comply.

Both parties appeared at the hearing. The Landlord also had as a witness his wife, D.D. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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

1. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?
2. Should the Notice be cancelled?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated as follows: the tenancy began January 1, 2015; monthly rent was payable in the amount of \$1,250.00; a security deposit in the amount of \$600.00 was paid on January 5, 2014. At the hearing the Landlord confirmed that the agreement erroneously noted this payment as occurring in 2014 when in fact it occurred in 2015.

The Landlord testified that at the time of the hearing the amount of rent outstanding was \$9,400.00 comprised of the following:

April 2015	\$650.00
June 2015	\$1,250.00
July 2015	\$1,250.00
August 2015	\$1,250.00
September 2015	\$1,250.00
October 2015	\$1,250.00
November 2015	\$1,250.00
December 2015	\$1,250.00
TOTAL	\$9,400.00

The Landlord stated that he did not issue a Notice to End Tenancy earlier, as the Tenant was difficult to find and as she was “in and out of the province.”

In any case, the Landlord confirmed that he issued a 10 day Notice to End Tenancy for non-payment of rent on October 20, 2015 indicating the amount of \$5,650.00 was due as of October 1, 2015 (the “Notice”). The Notice was introduced in evidence by the Landlord.

D.D. testified that she personally served the Tenant with the Notice on October 20, 2015. She testified that she “caught the Tenant leaving” and she ran outside and personally served the Tenant. According to D.D. the Tenant responded, “I understand, you put up with me too long”. She further testified that her husband, the Landlord witnessed service.

The Landlord further testified that he witnessed service of the Tenant. Accordingly, I find that the Tenant was served with the Notice as of October 20, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, October 25, 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. As October 25, 2015 is a Sunday, the Tenant had until October 26, 2015 to file her application.

The Tenant filed her application on October 29, 2015. On her application she confirmed she received the Notice on October 20, 2015.

The Tenant did not apply for more time to make her application.

The Tenant confirmed that the rent was outstanding in the amount of \$9,400.00. She stated that she had hoped to arrange for a payment schedule with help from her father.

Analysis

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

The Tenant failed to make her application within five days of receiving the Notice. Further, the Tenant has not paid the outstanding rent and in filing out of time, 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.

As I stated during the hearing, 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 \$9,500.00 comprised of outstanding rent of \$9,400.00 as set out in this my Decision and the \$100.00 fee paid by the Landlord for this application. I grant the Landlord an Order under section 67 for the balance due of **\$9,500.00**.

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 in time 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 and is granted a Monetary Order for the sum of **\$9,500.00**.

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: December 23, 2015

Residential Tenancy Branch

