



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF (Landlords' Application)
 CNR, MNDC, FF (Tenant's Application)

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for 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 also applied for dispute resolution, although failed to attend the hearing. Accordingly, the Tenant's application is dismissed without leave to reapply.

Only the Landlords, J.A. and M.A. appeared at the hearing. J.A. testified on behalf of the Landlords, 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.

J.A. testified he personally served the Tenant with the Notice of Hearing and his Application for Dispute Resolution on Sunday October 18, 2015. J.A. also confirmed that he filed an Amendment to an Application for Dispute Resolution wherein they confirmed he sought compensation for ½ of the outstanding utilities and unpaid rent for October, November and December 2015. J.A. testified that he personally served the Tenant with this Amendment in the evening of November 30, 2015. This service was witnessed by the Landlord's brother, J.A. I accept the Landlords' undisputed testimony and I find the Tenant was duly served of the Application and the Amendment in accordance with the *Residential Tenancy Act*.

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 Landlords to an Order of Possession and monetary relief?

Background and Evidence

Introduced in evidence was a copy of the "Residential Lease Agreement" dated October 4, 2015. J.A. testified that he drafted the agreement at the insistence of the Tenant, yet the Tenant refused to sign. In any case, J.A. testified as to the terms of the tenancy as follows: the tenancy began July 19, 2015; monthly rent was payable in the amount of \$1,400.00; a security deposit in the amount of \$700.00 was paid at the beginning of the tenancy.

The Tenant failed to pay rent for the month of October 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on October 9, 2015 in which the amount of \$1,400.00 was noted as due as of October 1, 2015 (the "Notice"). The effective date of the Notice was October 20, 2015.

J.A. testified that the service was witnessed by a friend, I.B. Based on the undisputed testimony of Landlord, I find that the Tenant was personally served with the Notice on October 9, 2015 at 8:15 p.m. on accordance with the *Residential Tenancy Act*.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, October 14, 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.

Although the Tenant filed a Tenant's Application for Dispute Resolution on October 14, 2015, the Tenant failed to attend the hearing to dispute the Notice.

M.J. testified that the Tenant also did not pay rent for November 2015 or December 2015.

The Residential Lease Agreement also provided that the Tenant was to pay half of the utilities. J.A. testified that the Tenant paid half of the utilities for the months of July, August and September, but failed to pay his 50% share for the months of October, November and December. While the Tenant refused to sign the Residential Lease Agreement, I find that the parties had an oral tenancy agreement which included the terms in the written document and that in particular I find that the parties agreed that the

Tenant would pay 50% of the utilities as evidenced by his payment for these utilities in July, August and September 2015.

In total the Landlords sought **\$4,412.74** in compensation for the following:

Rent for October 2015	\$1,400.00
50% share of the utilities for October 2015	\$37.65
Rent for November 2015	\$1,400.00
50% share of the utilities for November 2015	\$149.55
Rent for December 2015	\$1,400.00
50% share of the utilities for December 2015 (amount known at time of filing Amendment)	\$75.54.
Filing fee	\$50.00
TOTAL	\$4,412.74

Analysis

Based on the above, the Landlords' undisputed testimony and evidence filed, and on a balance of probabilities, I find as follows.

The Tenant has not paid the outstanding rent and his application to dispute the Notice is dismissed as he failed to attend the hearing. As his application is dismissed he 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 Landlords are 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. Therefore, I find that the Landlords are 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 also accept the Landlord's undisputed testimony and find that the Landlords have established their total monetary claim of **\$4,412.74** comprised of outstanding rent and utilities for October, November and December 2015 as claimed on the Amendment and the \$50.00 fee paid by the Landlords for this application. I grant the Landlords an Order under section 67 for the amount of \$4,412.74. 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 Landlords are granted an Order of Possession and are granted a Monetary Order for the amount claimed.

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: December 14, 2015

Residential Tenancy Branch

