



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR MNR MNSD 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, and to recover the filing fee.

The Landlord was represented by an agent, G.M., who attended the teleconference hearing (hereinafter referred to as the "Landlord"). During the hearing the Landlord was given the opportunity to provide his evidence orally. A summary of his 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 December 3, 2015. Under the *Residential Tenancy Act*, documents served in this manner are deemed served five days later. I accept the Landlord's undisputed testimony and find that the Tenant was served as of December 8, 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

Introduced in evidence was a copy of the residential tenancy agreement which indicated as follows: the tenancy began May 1, 2014; monthly rent was payable in the amount of \$850.00; and a security deposit in the amount of \$412.50 was paid on May 1, 2014.

The Tenant failed to pay rent for the month of August, September, October and November 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on November 3, 2015 indicating the amount of \$3,400.00 was due as of November 1, 2014 (the "Notice").

Based on the testimony of G.M., and the Proof of Service Notice to End Tenancy provided in evidence, I find that the Tenant was personally served with the Notice on November 3, 2015 by J.D. whom the Landlord identified as the building manager. Accordingly, I find that the Tenant was served with the Notice as of November 3, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, November 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. As November 8, 2015 is a Sunday, the Tenant had until November 9, 2015 to make an application for Dispute Resolution.

The Landlord testified that the Tenant did not pay the outstanding rent, nor did he make an application for dispute resolution.

The Landlord further testified that the Tenant failed to pay rent for December 2015 or January 2016 such that the Landlord sought the sum of \$5,100.00 in addition to recovery of the filing fee of \$50.00.

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 must be served on the Tenant by the Landlord and 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 \$5,150.00 comprised of \$5,100.00 in unpaid rent for the months August, September, October, November and December 2015 as well as January 2016, and the \$50.00 fee paid by the Landlord for this application.

I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, which the Landlord continues to hold, in the amount of \$412.50, and which has accrued \$0.00 in interest to date.

I authorize the Landlord to retain the Tenant's full security deposit of \$412.50 in partial satisfaction of the Landlord's monetary claim, and I grant the Landlord a monetary order under section 67 for the balance due of **\$4,737.50**. This Order must be served on the Tenant by the Landlord and 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 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 in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, unless 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: January 22, 2016

Residential Tenancy Branch

