



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent.

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 served the Tenant with the Notice of Hearing and their Application on November 30, 2015 by registered mail. The Landlord testified that the Tenant failed to accept the registered mail such that it was returned to the Landlord. Failure or refusal to accept registered mail does not negate service. Under the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of December 5, 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

The Landlord also testified as to the terms of the tenancy. He stated that the tenancy began July 1, 2015; monthly rent was payable in the amount of \$600.00; and, the

Tenant paid a security deposit in the amount of \$300.00 as well as a pet damage deposit in the amount of \$100.00.

The Landlord testified that the Tenant failed to pay the full amount of rent for the month of October 2015 leaving \$220.00 owing. The Tenant also failed to pay his November 2015 rent in the amount of \$600.00. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on November 11, 2015 which indicated the amount of \$820.00 was due as of November 1, 2015 (the "Notice").

Based on the testimony of the Landlord, I find that the Tenant was served with the Notice on November 11, 2015 by posting to the rental unit door. 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 November 14, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, November 19, 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 also failed to pay rent for the month of December 2015 or January 2016. He stated that the Tenant's mother informed him recently that the Tenant had vacated the rental unit approximately two to three weeks ago. Apparently she informed the Landlord that she was residing in the rental unit to "keep an eye on his stuff". The Landlord confirmed that the Tenant, or a person acting on behalf of the Tenant, changed the locks on the rental unit without the Landlord's knowledge or consent. He confirmed that he did not give the Tenant's mother authority to occupy the rental unit.

The Landlord confirmed he also sought compensation for unpaid rent for December 2015 and January 2016 for a total of \$2,020.00.

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 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 \$2,020.00 comprised of: \$220.00 in unpaid rent for October 2015; \$600.00 in unpaid rent for November 2015; \$600.00 in unpaid rent for December 2015; and, \$600.00 in unpaid rent for January 2016. I grant the Landlord an Monetary Order under section 67 for the sum of **\$2,020.00**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The Landlord is at liberty to apply for a further Monetary Order should he suffer any further losses associated with the Tenant overholding, or damage to the rental unit.

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, and is granted a Monetary Order for the amount of **\$2020.00**

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: January 21, 2016

Residential Tenancy Branch

