



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant attended. The landlord testified that the tenant was served with the Landlord Application for Dispute Resolution and notice of this hearing by registered mail on November 30, 2015 and has provided a copy of a Registered Mail ticket addressed to the tenant, stamped by Canada Post bearing that date and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issues to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for additional rent agreed upon?

Background and Evidence

The landlord testified that this tenancy began on August 1, 2014 as a rent-to-own. The terms of the rent-to-own contract were not fulfilled and the parties agreed to a fixed term to expire on August 1, 2016. A copy of the tenancy agreement has been provided, and it specifies that rent in the amount of \$1,200.00 per month is payable on the 1st day of each month, although the

parties had a verbal agreement for \$1,300.00 per month. No security deposit or pet damage deposit were collected.

The tenant failed to pay rent when it was due in August, and failed to pay any rent for September or October, 2015. The landlord's father served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the notice) on November 15, 2015, a copy of which has been provided. The notice is dated November 15, 2015 and contains an effective date of vacancy of November 25, 2015 for unpaid rent in the amount of \$3,600.00 that was due on November 1, 2015. The tenant was actually in arrears at that time \$4,800.00 but the landlord told the tenant that if he paid the 3 months of rental arrears, the landlord would forgive the 4th month. The tenant has not paid any rent since the notice was issued and is now in arrears of rent the amount of \$7,200.00 for August, 2015 through January, 2016.

The tenant has not served the landlord with an application for dispute resolution disputing the notice, but emailed the landlord on November 15, 2015 after receiving the notice stating that the tenant did not want to leave and that he wasn't moving until ordered by the Residential Tenancy Branch. The landlord has been told by neighbours that the tenant has moved, and the landlord attended to check on the rental unit and there were still belongings and cleaning supplies visible, so the landlord did not go in. The gas company has also advised the landlord that gas has been disconnected to the rental unit. The landlord seeks an Order of Possession and a monetary order for the unpaid rent.

The landlord's witness testified that he is the father of the landlord and that on November 15, 2015 the witness attended the rental unit and knocked on the door. A woman answered the door who is apparently the tenant's spouse or partner, and the witness asked for the tenant. The witness handed the woman an eviction notice, and the tenant was there as well. The witness saw the woman give the tenant the eviction notice, she thanked the witness and the witness left.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice by filing an application for dispute resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in the notice. In this case, I am satisfied that the landlord's witness served the tenant with the notice by handing it to an adult person who apparently resides with the tenant on November 15, 2015. The landlord testified that the tenant has not paid the rent and has not served the landlord with an application for dispute resolution disputing the notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy contained in the notice has already passed, I grant the order on 2 days notice to the tenant.

I have reviewed the tenancy agreement, and in the absence of any evidence to the contrary, I also accept the landlord's testimony that the tenant is indebted to the landlord for rent for each of the months of August, 2015 through January, 2016 inclusive totaling \$7,200.00. I deny the application for the additional \$100.00 per month verbal agreement and find that the written tenancy agreement is the agreement made by the parties.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$7,250.00.

These orders are final and binding and may be enforced.

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: January 20, 2016

Residential Tenancy Branch

