



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent, a monetary order for unpaid rent, and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. The Landlord gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified they served the Tenant with the Notice of Hearing and their Application on March 10, 2016, via registered mail. The Landlord provided a Canada Post Registered Mail tracking receipt in support of their evidence. Under the Act documents served this way are deemed served five days later. I find the Tenant was duly served.

The Landlord's application includes a monetary claim for the cost of hauling away an old sofa belonging to the tenant. This issue is not related to the order of possession based on unpaid rent and I dismiss it with leave to reapply.

I have reviewed all oral and written evidence before me. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The Landlord testified that they entered into a tenancy agreement with the Tenant for a month to month tenancy that began on July 1, 2015. Rent of \$877.00 was required to be paid on or before the first of each month.

The Landlord testified that when the Tenant failed to pay all the rent for January and February 2016, a 10 Day Notice was served by posting it to the Tenant's door on February 2, 2016. The Landlord testified that the Tenant owes rent for January 2016, February 2016, March 2016, and April 2016.

The Landlord has provided evidence that the Tenant paid the following amounts toward rent arrears:

- \$264.34 on February 9, 2016
- \$280.00 on February 22, 2016
- \$300.00 on March 14, 2016

The 10 Day Notice listed unpaid rent in the amount of \$474.00 that was due February 1, 2016.

The Landlord's application provides that their claim for \$1,058.91 is comprised of rent arrears for January, February, and March 2016, late payment fees, and the cost of the filing fee. The Landlord also testified that the Tenant is still occupying the rental unit and that rent for April 2016 is included in their claim.

Based on the evidence and testimony of the Landlord, I find that the Tenant was served with a 10 day Notice to End Tenancy (the "Notice") for non-payment of rent on February 2, 2016 by posting the Notice on the door. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. I find that the Notice was deemed served on February 5, 2016, and the tenant had until February 10, 2016 to pay the rent. The Notice also explains that the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. Records at this office indicate that the Tenant did not apply to dispute the Notice to End Tenancy.

Analysis

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

While the Tenant made a \$264.34, payment towards the rent on February 9, 2016, the outstanding amount of \$474.00, as indicated in the Notice, was not paid in full. The Tenant did not pay the full amount of 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. I find that the tenancy ended on February 15, 2016.

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.

The evidence of the landlord was the tenant did not pay rent for the months of January 2016; February 2016; March 2016; and April 2016. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused a loss to the landlord. As the Tenant has failed to pay rent on time, I find that the Landlord is entitled to claim a late fee of \$25.00 per month as set out in the Tenancy Agreement.

I find that the Landlord was entitled to four months' rent at \$474.00, per month for a total of \$1,896.00, less the \$844.34, paid by the tenant. I find that the Landlord has established a monetary claim of **\$1,251.66**, comprised of rent, late payment fees of \$100.00, and the \$100.00 filing fee. This monetary 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 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 unpaid rent.

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: April 05, 2016

Residential Tenancy Branch