



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 and Preliminary Matter

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.

This matter was originally scheduled for April 5, 2016. Despite this, the Landlord called into the hearing on April 4, 2016 believing her matter was set for that day. As a result of a computer problem at the Branch, it was not possible to confirm the Landlord's hearing date, and this Arbitrator accepted the Landlord's information that the hearing was scheduled for April 4, 2016. The Tenant was not in attendance.

Following the April 4, 2016 hearing, this Arbitrator determined that the hearing was in fact scheduled for April 5, 2016. Neither party called into the hearing on April 5, 2016. As the Landlord had appeared on April 4, 2016 it was not surprising she did not call in April 5, 2016. However, and while it was possible the Tenant did not intend to attend the hearing on April 5, 2016, I decided to reschedule the hearing to ensure she had a fair opportunity to be heard.

The hearing was reconvened to April 8, 2016. Both parties attended the hearing. The Landlord was represented by the Property Manager I.C. (for the purposes of this Decision I will refer to I.C. as the "Landlord" and the Tenant as "Tenant"). The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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 confirmed that the tenancy began on November 1, 2010. Monthly rent at the time was \$867.00; however, as the rental unit was subsidized, the Tenant's portion was \$510.00. The Tenant paid a security deposit of \$433.50.

The Landlord confirmed that at the time of signing, the Tenant was given a regular month to month tenancy. She stated that the Tenant then began regularly paying her rent late. On March 3, 2015 the Tenant was given a letter informing her that she had paid her rent late three times; namely: August 2014, September 2014 and March 2015, and that the next time she was late she was going to be given a notice.

The Landlord confirmed that the Tenant did not pay her rent for May 2015, and as a result she was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 4, 2016.

The Landlord testified that on May 13, 2015 the Tenant had yet to respond to the Notice at which time the Landlord sent her another breach letter as well as serving her a 1 Month Notice to End Tenancy for Cause citing her repeated late payment of rent as the reason to end the tenancy.

The Landlord testified that she and the Tenant came to an agreement that the tenancy would end June 30, 2015. They further agreed that the Tenant was allowed to remain in occupation, provided that she pay her rent on time and agree to a five month fixed term tenancy from July 1, 2015 to October 31, 2015.

The Landlord testified that this fixed term ended and the parties entered into another fixed term tenancy from January 1, 2016 to May 2016.

The Landlord testified that the Tenant then paid her rent regularly and then in February 2016 rent was not paid on time. The Landlord issued another 10 Day Notice to End to

End Tenancy on February 3, 2016 with an effective date of February 13, 2016 (the "February Notice"). The February Notice was posted to the rental unit door on February 3, 2016. Section 90 of the *Residential Tenancy Act* provides that the Tenant is deemed served three days later (February 6, 2016) such that the effective date automatically corrects to February 16, 2016.

The Notice informed the Tenant that it would be cancelled if rent was paid in full within five days of service, February 11, 2016. The Notice also informed the Tenant that she had five days in which to make an application for dispute resolution.

The Tenant paid the outstanding rent on February 17, 2016 which is outside the five day limit imposed by the *Act*.

The Landlord provided the Tenant with a receipt for "use and occupancy only" and advised the Tenant that this did not reinstate the tenancy and applied for dispute resolution.

The Landlord testified that after receiving the Notice, the Tenant paid her March rent on March 3, 2016 and as of the date of the April 8, 2016 hearing, had yet to pay her April rent.

The Landlord confirmed she sought an Order of Possession, a Monetary Order for the outstanding April rent in the amount of \$466.00, the \$25.00 late fee (as provided for in paragraph 19(b)(ii) of the tenancy agreement) and the \$100.00 filing fee.

The Tenant also testified and confirmed the evidence provided by the Landlord.

She confirmed that she has not paid the April rent. She also stated that I.C. has been very "wonderful" in her dealings. She stated that she wants to pay her rent but has found it difficult to do so since being in receipt of income assistance. She confirmed she as provided funds directly from income assistance and had used those funds for other expenses rather than her rent.

The Tenant acknowledged the tenancy was ending and stated that she was hopeful the Landlord would offer her another tenancy, perhaps one in which her rent was paid directly by income assistance.

Analysis

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

The Tenant did not pay the outstanding February rent within the five days mandated by section 45 and also 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, 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 **\$591.00** including \$466.00 for outstanding rent for April 2016, \$25.00 for the late fee pursuant to section 19(b)(ii) and \$100.00 for the fee paid by the Landlord for this application. Accordingly, I grant the Landlord a Monetary Order under section 67 for the amount of **\$591.00**. 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 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 and interest 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, 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 08, 2016

Residential Tenancy Branch

