



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution seeking relief under the *Residential Tenancy Act* (the "Act"). The Landlord applies for an order of possession for unpaid rent, a monetary order for unpaid rent, and to recover the filing fee.

The Landlord oral evidence confirming the Application for Dispute Resolution (the "Application") was sent to the Tenant by registered mail on March 31, 2016. The Landlord stated that, according to the Canada Post tracking information, the Application was received on April 1, 2016. I am satisfied the Tenant was duly served with the Application on April 1, 2016.

Despite having been served with notice of the Application, the Tenant did not attend the hearing. Accordingly, only the Landlord provided evidence orally and in documentary form. A summary of the Landlord's evidence, derived from the Landlord's documentary evidence and affirmed testimony, is provided below. I have included only that evidence which is relevant to the hearing.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent?
2. Is the Landlord entitled to a monetary order for unpaid rent? If so, in what amount?
3. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

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.

The Landlord advised the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 6, 2016 (the "10 Day Notice"). This was accomplished by leaving copies of the 10 Day Notice both in the Tenant's mailbox and attached to the Tenant's door. Pursuant to section 90 of the Act, documents served by these methods are deemed to be received three days later. I am satisfied the Tenant was duly served with the 10 Day Notice on March 9, 2016.

The Landlord's unchallenged testimony confirmed a tenancy agreement between the parties was entered into in or about September 2010. At all material times, the tenancy continued on a month-to-month basis. Rent in the amount of \$1,650.00 is due and payable on the first of each month. The Tenant paid a security deposit in the amount of \$825.00, although no claim against the security deposit has been made.

The Landlord's unchallenged oral testimony confirmed she has not received any rent from the Tenant for the months of March and April 2016. Although he continues to have difficulty contacting the Tenant, the Landlord believes she continues to occupy the rental unit.

Analysis

Based on the documentary evidence and unchallenged oral testimony provided during the hearing, and on the balance of probabilities, I find the following:

Section 26 of the Act requires tenants to pay rent when it is due under the tenancy agreement, unless there exists a right under the Act to deduct all or a portion of it. The Landlord's evidence confirms the Tenant has not paid rent for March and April 2016. There is no evidence before me that the Tenant had authority under the Act to reduce or refuse to pay rent.

Section 46 of the Act requires a tenant to pay rent or dispute a notice within five days after being served with a notice. Failure to do either of these leads to the conclusive presumption that the tenant has accepted the end of the tenancy. The Tenant is deemed to have been served with the 10 Day Notice on March 9, 2015, but has not paid rent or filed an application for dispute resolution. Accordingly, pursuant to section 46, I

find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the notice.

The Landlord has requested an order of possession. In light of the above, and pursuant to section 55 of the Act, I find the Landlord is entitled to an order of possession, which will be effective two days after service on the Tenant.

Further, I find the Tenant owes the Landlord \$3,300.00 in rent for the months of March and April 2016.

As the Landlord has been successful in his Application, he is entitled to recovery of the \$100.00 filing fee.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$3,400.00, which is comprised of \$3,300.00 in overdue rent, and the \$100.00 filing fee.

Conclusion

As the Tenant has not paid rent when due, I grant the Landlord a monetary order in the amount of **\$3,400.00**. This order must be served on the Tenant, and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I grant the Landlord an order of possession, which will be effective two days after service on the Tenant. This order must be served on the Tenant, and may be filed in the Supreme Court and enforced as an order of that Court.

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: April 25, 2016

Residential Tenancy Branch