



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein he sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on April 11, 2016 (the "Notice").

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

The Landlord testified that she personally served the Tenant with the Notice of Hearing and her Application on May 13, 2016 immediately after receiving the Notice of Dispute Resolution Hearing letter from the Residential Tenancy Branch. Accordingly, I find the Tenant was duly served as of May 13, 2016.

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 testified as to the terms of the tenancy as follows. She stated that the tenancy began November 1, 2014. Monthly rent was payable in the amount of \$800.00. A security deposit in the amount of \$400.00 was paid at the start of the tenancy.

The Residential Tenancy Agreement, dated November 1, 2014 was also introduced in evidence and which confirmed the Tenant was responsible for paying the full amount of the electricity utility. The Landlord also provided in evidence copies of the electricity invoices.

The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on April 11, 2016 indicating the amount of \$1,110.00 was due as of April 1, 2016 (the "Notice").

Introduced in evidence by the Landlord was a copy of a handwritten ledger confirming the amounts owing, and which showed the Tenant was regularly late paying her rent and the electricity bill.

Based on the testimony of the Landlord and the filed Proof of Service—Notice to End Tenancy, I find that the Tenant was served with the Notice on April 11, 2016 by posting to the rental unit door and leaving a copy of the Notice in the mailbox of the rental unit. 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 April 14, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, April 19, 2016. 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 did not pay the outstanding rent, nor did she apply to dispute the Notice. The Landlord confirmed that the Tenant also failed to pay her June rent such that at the time of the hearing the amount of \$1,853.43 was owed for rent.

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 *Residential Tenancy 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 **\$1,853.43** comprised of outstanding rent. I therefore grant the Landlord an Order under section 67 for the balance due in the amount of **\$1,853.43**. 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 and is granted a monetary Order for the balance due in the amount **\$1,853.43**.

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: June 08, 2016

Residential Tenancy Branch