



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application and an amended application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing with Legal Counsel and a witness. 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 had originally applied for the Order of Possession by way of the Direct Request Process, which was adjourned to this participatory hearing by an Arbitrator, Residential Tenancy Branch. An Interim Decision was provided, which ordered the landlord to serve the Interim Decision and notice of this hearing upon the tenant in accordance with Section 89 of the *Residential Tenancy Act* within 3 days of receiving the Interim Decision.

The landlord gave affirmed testimony and provided evidentiary material in advance of the hearing, however the landlord's witness did not testify. The landlord testified that the Interim Decision, evidentiary material and notice of hearing were served on the tenant personally the same day they were received. I accept that testimony, and I find that the tenant was served in accordance with the Interim Decision of the director and the *Residential Tenancy Act*.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this fixed-term tenancy began on March 21, 2016 and expires on March 31, 2017, thereafter reverting to a month-to-month tenancy. Rent in the amount of \$1,350.00 per month is payable on the 1st day of each month, and the landlord collected a pro-rated amount for the first partial month. At the outset of the tenancy the landlord also collected a security deposit from the tenant in the amount of \$675.00 as well as a pet damage deposit in the amount of \$675.00, both of which are still held in trust by the landlord.

The tenant paid rent by way of post-dated cheques for the months of May, June and July, and the rent cheque for May, 2016 was dishonoured by the tenant's financial institution. A copy of the returned item has been provided and it is marked returned for insufficient funds.

On May 10, 2016 the landlord personally served to the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated May 10, 2016 and contains an effective date of vacancy of May 20, 2016 for unpaid rent in the amount of \$1,350.00 that was due on May 1, 2016. Also provided is a Proof of Service document signed by the landlord and by a witness of the landlord stating that the witness observed the landlord serve the notice personally on May 10, 2016. The tenant has not paid the rent and has not served the landlord with an application for dispute resolution disputing the notice, and the tenant is still in arrears of rent the sum of \$1,350.00. The landlord presented the rent cheque for June, 2016 which has been honoured by the tenant's financial institution.

Analysis

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 which case the notice is of no effect, or must dispute the notice by filing an application for dispute resolution within that 5 day period. 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.

I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. I have also reviewed the Proof of Service document, which I find is consistent with the landlord's testimony, that the tenant was personally served with the notice on May 10, 2016. I also accept the undisputed testimony of the landlord that the tenant has not paid the rent and has not served the landlord with an application for dispute resolution disputing the notice. I have no such application from

the tenant before me, and therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled under the *Act* to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

I am also satisfied in the evidence before me that the tenant is in arrears of rent the sum of \$1,350.00, and I grant a monetary order in favour of the landlord for that amount.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord has not make an application to keep any part of the security deposit or pet damage deposit and I leave it to the parties to deal with both deposits in accordance with Section 38 of the *Residential Tenancy Act*.

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 \$1,450.00.

This order is 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: June 16, 2016

Residential Tenancy Branch