



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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, an Order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

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

The Landlord testified he personally served the Tenant with the Notice of Hearing and the Landlord's Application on June 8, 2016. The Landlord testified that on three separate occasions, including approximately one week prior to the hearing, the night before the hearing and twice the morning of the hearing, the Tenant called to ask the Landlord not to proceed with the hearing. Accordingly, I find the Tenant was duly served as of June 8, 2016 and I proceeded with the hearing in his absence.

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

Introduced in evidence was a copy of the residential tenancy agreement between the Tenant, P.D. and the Landlord, S.B. The Landlord named on the application and the 10 Day Notice, and who attended the hearing, P.B., confirmed that S.B. is his father and that he has power of attorney over his father. P.B. further confirmed that he has dealt with the Tenant throughout the tenancy as the Landlord.

The tenancy began on December 15, 2015. Monthly rent was payable on the first day of the month in the amount of \$1,200.00. P.B. confirmed that the Tenant did not pay a security deposit.

P.B. testified that the Tenant failed to pay the rent for December 15, 2015, January 2016 and February 2016. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on February 15, 2016 indicating the amount of \$3,000.00 was due as of February 1, 2016 (the "Notice").

Based on the testimony of S.B., I find that the Tenant was personally served with the Notice on February 15, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the outstanding rent was paid within five days of service, namely, February 20, 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. As February 20, 2016 is a Saturday, the Tenant had until February 22, 2016 to apply to dispute the Notice.

S.B. testified that the Tenant did not apply to dispute the Notice and did not pay the outstanding rent.

S.B. testified that the Tenant also failed to pay rent for March, April, May, June and July 2016; and confirmed that as of the date of the hearing, the Tenant owed \$9,000.00 in outstanding rent. S.B. stated that he was doubtful the Tenant would pay the outstanding amount, however, he sought a Monetary Order in the amount of \$9,100.00 representing the outstanding rent and recovery of the \$100.00 filing fee.

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 *Residential Tenancy 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, unless the Tenant has some authority under the *Act* to not pay rent. In this situation I find that the Tenant had no authority under the *Act* to not pay rent.

Pursuant to section 55 of the *Residential Tenancy Act*, I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This Order must be served on the Tenant by the Landlord and may be filed in the Supreme Court and enforced as an Order of that Court.

I also find that the Landlord has established a total monetary claim of \$9,100.00 comprised of \$9,000.00 in unpaid rent and the \$100.00 fee paid by the Landlord for this application. Accordingly, I grant the Landlord an Order under section 67 of the *Residential Tenancy Act* for the sum of **\$9,100.00**. This Order must also be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

As the Tenant failed to pay a security deposit, the Landlord's application for authority to retain the deposit pursuant to section 38 of the *Residential Tenancy Act* is not applicable. Accordingly, I decline the Landlord's request for this relief.

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 in the amount of **\$9,100.00**.

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: July 12, 2016

Residential Tenancy Branch