



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent, pursuant to section 67.

At the July 27, 2016 hearing the tenant testified that he had been issued a "no contact order" that stipulates he is to have no contact directly or indirectly with the landlord through a third party. The landlord acknowledged the "no contact order" but testified that she was told because this is a civil matter the order did not apply.

Because the parties acknowledged such an order exists, I ordered the hearing to be completed by written submissions. An interim decision issued July 27, 2016 instructed the tenant to provide all written submissions no later than August 4, 2016 and the landlord to provide submissions no later than August 11, 2016.

At the July 27, 2016 hearing, the tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the Act, I find that the tenant was duly served with the landlord's application.

Preliminary Issue – Amendment of Landlords' Application

The landlord applied to amend the landlords' application to increase her monetary claim to include July 2016 unpaid rent of \$475.00. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if he did not pay the rent or vacate the rental unit to permit the landlord to re-rent the unit. Based on this undisputed evidence and in accordance with section 64(3)(c) of the Act, I amend the landlords' application to include a monetary claim for July 2016 unpaid rent of \$475.00.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

As per the submitted tenancy agreement, the tenancy began on April 15, 2016 on a fixed term basis. Rent in the amount of \$475.00 is payable on the first of each month. The tenant continues to reside in the rental unit.

A 10 Day Notice for Unpaid Rent ("10 Day Notice") of \$475.00 due on June 1, 2016 was issued to the tenant on June 6, 2016 by way of leaving a copy in the mail box at the tenant's residence. The notice indicates an effective move-out-date of June 16, 2016. The landlord provided a signed, witness proof of service. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on June 9, 2016, three days after its posting.

The landlord seeks a monetary order of \$950.00 for unpaid rent from June 2016 to July 2016. The landlord's application indicates that the tenant has not paid rent for the above two months.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the overdue rent or file an application to dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* (the

“*Regulation*”) or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$475.00. I find the landlord provided undisputed evidence that the tenant failed to pay rent from June 2016 to July 2016. Therefore, I find that the landlord is entitled to \$950.00 in rent.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I issue a monetary order in the landlord’s favour in the amount of \$950.00 against the tenant.

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: August 16, 2016

Residential Tenancy Branch