



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 and to recover the filing fee for the Application. The matter was originally considered in a Direct Request proceeding but adjourned to a participatory hearing by Decision made August 29, 2016.

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 that he served the Tenant with the Notice of Hearing and his Application on October 3, 2016 by registered mail. A copy of the tracking number was provided by the Landlord and is reproduced on the cover page of this my Decision. Under section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of October 8, 2016 and I proceeded in her 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 and which indicated as follows: the tenancy began July 1, 2016; and, monthly rent was payable in the amount of \$950.00. The Landlord further testified that the Tenant only failed \$100.00 towards the security deposit.

The Landlord testified that the Tenant communicated that she had some financial difficulties and in response he allowed the Tenant to pay rent in the amount of \$500.00 for the months of May and June 2016, with the understanding that she would, commencing July 1, 2016, pay the \$900.00 owing at a rate of \$100.00 per month over and above the \$950.00 rent payment.

The Landlord testified that the Tenant paid rent in the amount of \$950.00 in July and \$150.00 towards the \$900.00 owing, leaving \$750.00 owing for May and June 2016. He stated that the Tenant then failed to pay rent for the month of August 2016 and failed to pay the \$100.00 as agreed. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on August 3, 2016 indicating the amount of \$1,750.00 was due as of August 1, 2016 (the "Notice"). During the hearing the Landlord confirmed that in fact only \$1,700.00 was owed as of that date.

Based on the testimony of the Landlord, I find that the Tenant was served with the Notice on August 3, 2016 by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find pursuant to section 88 of the *Residential Tenancy Act*, that the Tenant was served with the Notice as of August 6, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, August 11, 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 failed to pay the outstanding rent by August 11, 2016 and also failed to make an application for dispute resolution.

The Landlord also testified that the Tenant failed to pay rent for September and October 2016 such that at the time of the hearing the Tenant owed \$3,600.00 in 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.

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 also find that the Landlord has established a total monetary claim of **\$3,600.00** comprised of rent owed and I grant the Landlord a Monetary Order under section 67 for this amount. 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 outstanding rent in the amount of **\$3,600.00**.

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: October 20, 2016

Residential Tenancy Branch

