



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for cause and for a monetary order for unpaid rent or utilities.

The landlord attended the hearing, but was represented by an agent who gave affirmed testimony. 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 call. The landlord's agent testified that the tenant was served with the landlord's application and notice of this hearing by registered mail on September 16, 2016 and was permitted to send to me by facsimile proof of such service after the hearing concluded. I have now received a copy of a Registered Domestic Customer Receipt and tracking history from Canada Post confirming such service, and I am satisfied that the tenant was served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

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

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on April 1, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$1,700.00 per month is payable on the 1st day of each month. The landlord's agent does not know if the landlord collected a security deposit or a pet damage deposit at any time during the tenancy. A copy of the first page only of a tenancy agreement has been provided, which does not mention any security deposit or pet damage deposit.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided, by sending it by registered mail to the tenant on August 19, 2016. It is dated August 19, 2016 and contains an effective date of vacancy of September 30, 2016. The reason for issuing it states: "Tenant is repeatedly late paying rent."

The landlord's agent also testified that a government Ministry pays a portion of the rent and the Ministry paid \$1,050.00 from the beginning of the tenancy to June, 2015, and the tenant's portion was \$650.00 per month. However, in June, 2015, the tenant only paid \$500.00, leaving \$150.00 owed to the landlord. The landlord has provided 2 ledgers, one for 2015 and one for 2016 which shows that the Ministry commenced paying \$750.00 per month from July, 2015 to February, 2016, and the tenant's share was \$950.00 per month. However, arrears accumulated until February, 2016. The ledger shows that the portion paid by the Ministry increased to \$1,100.00 per month commencing in March, 2016, and the tenant made payments resulting in a credit balance of \$100.000 in July, 2016, but the landlord's agent testified that the tenant has not paid any rent for July or any more rent to date and the landlord has only received the portions paid by the Ministry. The ledgers show that the tenant was in arrears \$2,240.00 to the end of 2015 and an additional \$1,450.00 for 2016 to the end of September, 2016.

The tenant has not served the landlord with an application for dispute resolution disputing the notice, and the tenant has not paid his portion of rent since June, 2016. The landlord seeks an Order of Possession and a monetary order in the amount of \$5,015.00 to the end of November, 2016.

The landlord's agent was permitted to send to me by facsimile proof of service of the notice to end the tenancy after the hearing concluded.

Analysis

The landlord has provided a copy of a Registered Domestic Customer Receipt and tracking history from Canada Post confirming the testimony of the landlord's agent that

the tenant was served with the 1 Month Notice to End Tenancy for Cause by registered mail on August 19, 2016 which is deemed to have been served 5 days later, or August 24, 2016..

The *Residential Tenancy Act* states that a tenant who does not dispute a notice to end a tenancy given by a landlord, is conclusively presumed to have accepted the end of the tenancy. The landlord's agent testified that the tenant has not served the landlord with such an application, and I have no application from the tenant before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy.

I have reviewed the 1 Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. Therefore, I find that the landlord is entitled 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.

With respect to the landlord's claim for unpaid rent, I have reviewed the spreadsheet provided by the landlord and I am satisfied that the landlord has established a monetary claim in the amount of \$3,690.00 for unpaid rent to the end of September, in addition to \$600.00 for October, 2016. With respect to rent for November, 2016, I am not satisfied that the landlord will be entitled to collect any rent over and above the amount that the landlord will receive by the Ministry, if any.

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

The landlord's agent was not able to provide any testimony with respect to any security deposit or pet damage deposit the landlord may have collected from the tenant, and I order the landlord to deal with any such deposit(s) in accordance with 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 hereby 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 \$4,390.00.

I order the landlord to deal with any security deposit or pet damage deposit in accordance with the *Residential Tenancy Act*.

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: November 07, 2016

Residential Tenancy Branch