



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords – OPR, OPC, OPB, ET, MNR, FF, O
For the tenant – MT, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords applied for an Order of Possession for unpaid rent or utilities; for an Order of Possession for cause, For an Order of Possession because the tenant has breached an agreement with the landlords; for a Monetary Order for unpaid rent or utilities; for an Early End to Tenancy; other issues; and to recover the filing fee from the tenant for the cost of this application.

The tenant applied for more time to file an application to cancel a Notice to End Tenancy and to recover the filing fee from the landlords for the cost of this application.

At the outset of the hearing the landlords withdrew their application for an Early End to Tenancy.

The hearing went ahead as scheduled; and the line reminded open for 28 minutes; however, the tenant failed to dial into the conference call during the hearing. Therefore, no hearing took place regarding the tenant's application as the tenant has failed to present the merits of their application. Consequently, the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*, served in person, with a witness, on February 23, 2017. The landlords amended their application on March 06, 2017 and served the

amended documents and evidence in person to the tenant, with a witness, on March 07, 2017.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent?
- Are the landlords entitled to an Order of Possession for cause?
- Are the landlords entitled to an Order of Possession because the tenant has breached an agreement with the landlords?
- Are the landlords entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlords testified that this tenancy started on August 01, 2014. Rent for this unit, including yard maintenance done by the landlord, is currently \$1,100.00 per month and is due on the first day of each month. A copy of the tenancy agreement has been provided in documentary evidence. Originally there were two tenants renting this property; however the other tenant gave notice in May, 2016 and the tenancy continued with this tenant as a sole tenant.

The landlords testified that the tenant failed to pay the rent due on March 01, 2017 leaving an unpaid balance of \$1,100.00. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on March 02, 2017. This was served in person to the tenant with a witness. The landlords have also provided digital evidence showing this service upon the tenant. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on March 13, 2017. The tenant

did not pay the outstanding rent or file an application to dispute the Notice. The total amount of unpaid rent including the yard care is \$1,100.00.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the evidence before me that there is outstanding rent for March, 2017 of \$1,100.00. Consequently, it is my decision that the landlords are entitled to recover this amount and will receive a Monetary Order pursuant to s. 67 of the *Act*.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$100.00** filing fee for this proceeding pursuant to s 72(1) of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act* on March 02, 2017. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days. The tenant did file an application but only sought more time to file her application to dispute a Notice to End tenancy without actually filing to dispute either the One Month Notice which was served on February 05, 2017 or the 10 Day Notice served on March 02, 2017.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the 10 Day Notice. As this date has since passed I grant the landlord an Order of Possession effective two days after service pursuant to s. 55 of the *Act*.

As I have issued an Order of Possession based on the unpaid rent and the 10 Day Notice to End Tenancy I am not required to deal with the reminder of the landlord's application for an Order of Possession for cause or an Order of Possession because the tenant has breached an agreement with the landlord.

Conclusion

For the reasons set out above, I grant the landlords a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$1,200.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

I HEREBY ISSUE an Order of Possession in favor of the landlords effective **two days** after service upon the tenant. This Order must be served on the Respondent, if the Respondent fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application is dismissed without leave to reapply.

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: March 21, 2017

Residential Tenancy Branch