



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested an Order of Possession and Monetary Order based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 19, 2017 (the "Notice").

The hearing was conducted by teleconference on May 8, 2017. Only the Landlord and the Landlord's daughter, translator and process server called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Originally the Landlord applied by way of Direct Request proceeding pursuant to section 54 of the *Act*. Filed in evidence was a Proof of Service Notice of Direct Request Proceeding which confirmed the Tenant was served by registered mail.

The Adjudicator adjourned the Direct Request proceeding to a participatory hearing as the proof of service for the 10 Day Notice was not signed nor was the tenancy agreement. Branch records confirm the Notice of Hearing for the participatory hearing was provided to the Tenant by letter dated April 4, 2017.

The Landlord's process server, R.E. testified that he also served the Landlord's Application material/evidence binder on April 15, 2017 by posting to the rental unit door. In all the circumstances, I find the Tenant was served with notice of the hearing before me today and I proceeded with the hearing in her absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid Rent?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement indicating this tenancy began February 1, 2016 for a six month fixed term. Monthly rent was payable in the amount of \$1,050.00. The Landlord testified that the Tenant did not pay rent for December 2016. She further confirmed that the Tenant also failed to pay rent for April and May 2017. She stated that as of the date of the hearing the sum of \$3,150.00 was owing for unpaid rent.

R.E. testified that he served the 10 Day Notice on March 19, 2017 by posting to the door. A copy of the affidavit of service was also provided in evidence. Section 90 of the *Act* provides that documents served in this way are deemed served three days later; accordingly, I find the Tenant was served as of March 22, 2017.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, March 27, 2017. 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 did not apply to dispute the Notice to End Tenancy.

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.

Under section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent.

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 find that the Landlord has established a total monetary claim of \$3,150.00 comprised of unpaid rent for December 2016, April 2017 and May 2017; I therefore grant the Landlord a Monetary Order under section 67 for the balance due of **\$3,150.00**. 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 balance due.

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: May 08, 2017

Residential Tenancy Branch