



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, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

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 their Application on April 5, 2017 by registered mail. A copy of the tracking number is included on the unpublished cover page of this my Decision. Under the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of April 10, 2017.

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 which indicated as follows. The tenancy began September 1, 2015. Monthly rent was payable in the amount of \$600.00. A security deposit in the amount of \$300.00 was paid at the start of the tenancy.

The Landlord testified that the Tenant failed to pay the full amount of rent for the month of August 2016 such that \$25.00 was owing. He stated that the Tenant also failed to pay rent for September 2016, October 2016, November 2016 and December 2016. The Landlord testified that the Tenant paid \$720.00 on December 2, 2016 such that as of December 6, 2016 the sum of \$1,705.00 was owing for rent. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on December 6, 2016 indicating the amount of \$1,705.00 was due as of December 1, 2016 (the "Notice").

Based on the Landlord's testimony I find that the Tenant was personally served with the Notice on December 6, 2016. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, December 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 stated that despite repeated promises, the Tenant has failed to pay the outstanding rent.

The Landlord provided in evidence copies of letters he sent to the Tenant detailing the amount of rent owing as well as noting the payments made by the Tenant. The Landlord testified that although the Tenant has made some payments, he has failed to pay the full amount of rent owing and as such, the Landlord sought monetary compensation in the amount of \$3,255.00 for unpaid rent.

Analysis

Based on the above, the Landlord's undisputed 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 such authority.

Conclusion

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 **\$3,355.00** comprised of \$3,255.00 in rent owing and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the Tenant's security deposit of \$300.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$3,055.00**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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 9, 2017

Residential Tenancy Branch