



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OT, OPR, OPB, MNR, MNDC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

On March 20, 2017, the Tenant applied for an order of possession.

On April 26, 2017, the Landlord submitted an Application for Dispute Resolution for an order of possession based on a breach of the tenancy agreement and non-payment of rent, and for a monetary order for unpaid rent or utilities. The matter was set for a conference call hearing.

The Landlords agent (“the Landlord”) attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that the Tenant was served with the Notice of Hearing in person at the rental unit on April 27, 2017.

I find that the Tenant has been duly served with the Notice of Hearing in accordance with sections 89 and 90 of the *Residential Tenancy Act* (*the Act*).

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

The initial hearing was adjourned by Arbitrator Taylor. Arbitrator Taylor is no longer employed by the Residential Tenancy Branch. The matter proceeded as a new hearing.

The Residential Tenancy Branch sent a Notice of Adjourned Hearing to the Tenant on April 25, 2017. The Notice sets out the date, time and telephone number for the hearing.

The Tenant failed to attend to the hearing. The line remained open while the phone system was monitored for 16 minutes and the Tenant did not call into the hearing during

this time. Therefore, as the Tenant did not attend the hearing by 9:46 AM, I dismiss the Tenant's application for an order of possession.

The hearing proceeded and the Landlord's claims for an order of possession and monetary order for unpaid rent were heard.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to a breach of the tenancy agreement?
- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?

Background and Evidence

The Landlord testified that the tenancy began on March 1, 2017, as a 1 month fixed term tenancy that requires the Tenant to vacate the unit. Rent in the amount of \$450.00 is to be paid on the first day of each month. The Tenant paid the Landlord a security deposit of \$225.00 and a pet deposit of \$225.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant did not vacate the rental unit at the end of the fixed term tenancy.

The Landlord testified that the Tenant is still living in the rental unit and has not paid the full amount of rent due under the tenancy agreement.

The Landlord testified that the Tenant was served with two different 10 Day Notices to End Tenancy for Unpaid Rent or Utilities.

- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 3, 2017.
- 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 2, 2017.

The Landlord testified that the 10 Day Notices were posted to the door and has provided a proof of service document for both of the 10 Day Notices that were served.

The Notices states that the Tenant has failed to pay rent that was due under the tenancy agreement. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that on April 5, 2017, the Tenant paid \$225.00 towards the rent, but still owes \$225.00.

The Landlord testified that the Tenant did not pay any rent owing under the tenancy agreement for May 2017, and made no payment after the 10 Day Notice was issued on May 2, 2017.

There is no evidence before me that that the Tenant made an application to dispute the 10 Day Notice dated April 3, 2017, or May 2, 2017.

The Landlord testified that the Tenant still owes rent money for the following months:

- April 2017, in the amount of \$225.00
- May 2017, in the amount of \$450.00

The Landlord submitted that rent payment of \$225.00 on April 5, 2017, was accepted from the Tenant on a “use and occupation only” basis. The Landlord provided a receipt that indicates the April rent payment was accepted on a use and occupation only basis.

The Landlord seeks an order of possession for a breach of the tenancy agreement and seeks a monetary order for a loss of rent in the amount of \$675.00.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the tenancy ended on April 1, 2017, which is the date the fixed term tenancy ended. I find that the parties agreed to the term in the tenancy agreement that the Tenant will vacate the rental unit at the end of the fixed term tenancy. I find that the Tenant is over holding the rental unit.

I also find that the Tenant did not pay the rent owing under the tenancy agreement when it was due, or within five days of receiving the 10 Day Notices, and did not apply to dispute either of the Notices. The Tenant is therefore 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.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, 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. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant owes the Landlord \$675.00 for unpaid rent.

I grant the Landlord a monetary order in the amount of \$675.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to attend the hearing and the Tenant's application is dismissed.

The Tenant failed to vacate the rental unit at the end of the fixed term tenancy.

In addition, the Tenant failed to pay the rent due under the tenancy agreement and did not file to dispute the Notices to end tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective 2 days after service on the Tenant, and I grant the Landlord a monetary order for the unpaid rent in the amount of \$675.00.

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: June 05, 2017

Residential Tenancy Branch