



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 and pet damage deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Agents for the Landlord appeared at the hearing (the “Agent”). 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.

The Agent testified they served the Tenant with the Notice of Hearing and their Application on June 28, 2017, by sending it registered mail. Under the Act documents served this way are deemed served five days later. I find the Tenant was duly served in accordance with the Act.

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.

Preliminary Matters

Pursuant to section 4.2 of the Rules of Procedure, the Landlord's Application was amended at the hearing to include a claim for unpaid rents for July, August and September 2017.

Issue(s) 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

Based on the affirmed testimony of the Agent for the Landlord, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on June 6, 2017 by personal service (the "Notice").

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. 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 Agent testified that the Tenant has not paid rent for June, July, August or September. There is no evidence before me that the Tenant filed an Application to dispute the 10 day Notice for unpaid rent.

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 there is no evidence the Tenant had 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 **\$1,860.00** comprised of four months of unpaid rent at \$440.00 per month and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security and pet damage deposits of \$874.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$986.00**.

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, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance of rent 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: September 06, 2017

Residential Tenancy Branch