



Dispute Resolution Services

Page: 1

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 and a Monetary Order based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on December 12, 2017 (the "Notice") and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing 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 personally served the Tenant with the Notice of Hearing and the Application on January 1, 2018. The Landlord filed a signed proof of service confirming that his mother witnessed him personally serve the Tenant at this time.

I accept the Landlord's testimony and find the Tenant was duly served as of January 1, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord/Tenant'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. Has the Tenant breached the *Act* or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?
2. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which provided as follows: the tenancy began September 1, 2016; monthly rent was payable in the amount of \$1,080.00; and, the Tenant paid a security deposit in the amount of \$540. Although the Tenant initialled each page of the tenancy agreement, he did not sign the agreement where indicated. The Landlord testified that despite not signing the agreement the tenancy continued on the terms set out in the agreement.

The Landlord testified that the Tenant failed to pay rent as required and as a result the Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on December 12, 2017 indicating the amount of \$3,240.00 was due as of December 1, 2017 (the "Notice").

Based on the filed Proof of Service—Notice to End Tenancy, I find that the Tenant was served with the Notice on December 12, 2017 by registered mail. Section 90 of the *Act* provides that documents served in this manner are deemed served five days later. Accordingly, I find that the Tenant was served with the Notice as of December 17, 2017.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, December 22, 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 confirmed that the Tenant did not pay the outstanding rent or apply to dispute the Notice.

The Landlord further confirmed that the Tenant failed to pay rent for January 2018 such that at the time of the hearing the sum of \$4,320.00 was owed for rent.

Analysis

Based on the testimony and evidence before me, 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 pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to 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 (2) 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 \$4,420.00 comprised of unpaid rent in the amount of \$4,320.00 and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$540.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$3,880.00**. This Order may be filed in the Provincial Court (Small Claims Division) 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 in partial satisfaction of the claim, 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: January 24, 2018

Residential Tenancy Branch