



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed January 26, 2018, wherein the Landlord requested an Order of Possession and Monetary Compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 1, 2017 (the "Notice") and to recover the filing fee.

Originally the Landlord applied by way of Direct Request Proceeding; by Interim Decision dated January 23, 2018, the adjudicator adjourned the matter to a participatory hearing as the Landlord failed to submit the complete residential tenancy agreement.

The participatory hearing was conducted by teleconference at 9:00 a.m. on March 26, 2018. Only the Landlord's son and agent, D.M., called into the hearing (hereinafter referred to as the "Landlord"). He gave affirmed testimony and was provided the opportunity to present their 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 the Application on January 28, 2018 by registered mail. During the hearing before me the Landlord was not able to provide me with the registered mail tracking number; I granted him authority to submit a copy following the hearing and confirm I received it on March 28, 2018. A copy of the registered mail tracking numbers for both Tenants is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where

the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant/Landlord was duly served as of February 2, 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 *Residential Tenancy 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?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began June 29, 2016. The Tenants rent a self-contained cabin on the rental property and pay \$510.00 per month, payable on the third of the month. The Landlord also stated that they continue to hold a security deposit in the amount of \$255.00.

The Landlord testified that on March 3, 2017 the Tenant paid a partial payment of \$70.00 towards the March 2017 rent. They stated that one of the Tenants was in a car accident and they were unable to work. The Landlord stated that he kept following up with them, and despite their promises to pay, they did not pay the outstanding rent.

On October 1, 2017 the Landlord issued the Notice.

The Landlord stated that after they received the Notice the Tenants paid \$510.00 on November 3, 2017. The Landlord further stated that they did not pay rent after that date such that at the time of the hearing the sum of **\$5,540.00** is outstanding.

Introduced in evidence by the Landlord was the following:

- Three pages of an addendum to a residential tenancy agreement which was signed by the landlord and Tenant B.S. on June 29, 2016, and indicates that the monthly rent is due on the third day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated October 1, 2017 for \$3,500.00 in unpaid rent (the 10 Day Notice). The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of October 12, 2017;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to Tenant B.S. at 11:30 am on October 2, 2017; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

Based on the testimony and evidence before me, and on a balance of probabilities, I find as follows.

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are 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 Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenants have some authority under the *Act* to not pay rent. In this situation the Tenants 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 **\$5,640.00** comprised of unpaid rent and the \$100.00 fee paid by the Landlord for this application. I grant the Landlord a Monetary Order under section 67 for the sum of **\$5,640.00**. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an Order of that Court.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are 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 rent due as well as recovery of the filing fee.

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: March 29, 2018

Residential Tenancy Branch