Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AUSTIN VENTURES LTD
and [tenant name suppressed to protect privacy]
DECISION

Dispute Codes: *OPR, OPC, CNR, MNR, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and for the recovery of the filing fee. The tenant applied to cancel the notice to end tenancy for non-payment of rent.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented himself. The landlord attended and was accompanied by his agent.
As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of the other's application for dispute resolution and evidence. I find that evidence was served to both parties in accordance with s.88 and s.89 of the *Act*.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

Background and Evidence

The tenancy started in August 2018. The monthly rent is $650.00 payable on the first of the month. Prior to moving in the tenant paid a security deposit of $300.00. On March 27, 2019, the landlord served the tenant with a notice to end tenancy for cause. The tenant did not dispute the notice. On April 02, 2019, the landlord served the tenant with a ten-day notice to end tenancy for rent owed in the amount of $650.00. The tenant made application to dispute the notice in a timely manner.

The tenant stated that he had visited the resident care taker on April 01, 2019, to pay rent but there was no response to his knock on the door.
The tenant agreed that the owner visited him on April 12, 2019 to collect rent, but he did not have it available. The tenant also agreed that as of the date of this hearing he owed rent for the months of April and May 2019 in the total amount of $1,300.00

Analysis

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for non-payment of rent on April 02, 2019 and did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. The order may be filed in the Supreme Court for enforcement.

Since the landlord has proven his claim I award the landlord the recovery of the filing fee of $100.00. The landlord has established a total claim of $1,400.00 which includes $1,300.00 for unpaid rent plus $100.00 for the filing fee. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act,* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order in the amount of $1,400.00.

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: May 10, 2019

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Residential Tenancy Branch