



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FFL

Introduction

On February 20, 2020, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an order of possession; for a monetary order for unpaid rent or utilities; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlords agent (“the Landlord”) attended the teleconference hearing; however, the Tenants did not. The Landlord provided affirmed testimony that the Tenant was served the Notice of Dispute Resolution Proceeding in person at the rental unit on February 21, 2020.

I find that the Tenants have been duly served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of 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.

Issues to be Decided

- 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?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on November 1, 2018, as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$2,800.00 is to be paid to the Landlord by the first day of each month. The

Tenant paid the Landlord a security deposit in the amount of \$1,400.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant started falling behind with rent payments starting September 2019.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 6, 2020, ("the 10 Day Notice").

The Landlord testified that the Tenant was served with the Notice by posting it on the Tenant's door on at 10:00 am on February 6, 2020.

The 10 Day Notice indicates that the Tenant has failed to pay rent in the amount of \$7,300.00 which was due on February 1, 2020. 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.

There is no evidence before me that the Tenant made an application to dispute the 10 Day Notice.

The Landlord testified that the Tenant did not pay the full amount of rent owing within five days of receiving the 10 Day Notice.

The Landlord testified that in addition to the amount in arrears, the Tenant has not paid the full rent owing under the tenancy agreement for the months for March 2020 and April 2020. The Landlord testified that the Tenant made rent payments totalling \$7,600.00 after the 10 Day Notice was served:

- February 2020 \$1,000.00 received from the Tenant
- March 1, 2020 \$500.00 received from the Tenant
- March 7, 2020 \$1,500.00 received from the Tenant
- March 15, 2020 \$1,500.00 received from the Tenant
- March 25, 2020 \$1,000.00 received from the Tenant
- April 6, 2020 \$1,000.00 received from the Tenant
- April 15, 2020 \$1,100.00 received from the Tenant

The Landlord is seeking an order of possession for the rental unit and is seeking a monetary order for unpaid rent up to and including April 2020 in the amount of \$5,300.00.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant is deemed to have received the 10 Day Notice on

February 9, 2020; the third day after it was posted to his door. I find that the Tenants did not pay all the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice, and they did not apply to dispute the 10 Day Notice; and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ends on February 15, 2020; the effective date of the Notice.

I find that the Landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find that the tenancy agreement requires the Tenants to pay the Landlord \$2,800.00 each month for rent. I find that the Tenants are still living in the rental unit despite not paying all the rent owing under the tenancy agreement.

I find that the Tenants owe the Landlords the amount of \$5,300.00 for unpaid rent up to and including April 2020.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I find that the Landlords have established a total monetary claim of \$5,400.00 comprised of \$5,300.00 in unpaid rent for the above-mentioned months and the \$100.00 fee paid by the Landlords for this hearing.

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 Tenants failed to pay all the rent due under the tenancy agreement and did not file to dispute the Notice. The Tenants are 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 two (2) days after service on the Tenants and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$5400.00.

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: April 20, 2020

Residential Tenancy Branch