



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, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant.

Only the landlord appeared. The landlord testified that they served the tenant with the Application for Dispute Resolution and Notice of Hearing, by registered mail, sent on February 26, 2021. A Canada post tracking number was provided as evidence of service. The Canada post history shows that on March 2, 2021 they left the tenant a notice that the package was available for pickup. On March 11, 2021 the tenant was given a final notice to pickup the package. The tenant did not attend to collect the package and it was returned unclaimed on March 18, 2021.

Section 90 of the Act determines that a document served in this manner is deemed to have been served, five days later. I find that the tenants have been duly served in accordance with the Act. Refusal or neglect to pickup the package does not override the deemed service provisions of the Act.

The landlord gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

At the outset of the hearing the landlord requested to amend their application for subsequent unpaid rent since filing their application. Since rent is the most basic term of all tenancy, I have allowed the landlord application to be amended for subsequent unpaid rent, pursuant to section 62 of the Act.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?
Is the landlord entitled to a monetary order?

Background and Evidence

The landlord testified that the rent is \$800.00 per month, payable on the first of each month. The landlord stated that the tenant had failed to paid rent for January and February 2021. The landlord stated as a result they served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities(the "Notice"), issued on February 5, 2021, by posting to the door of the rental unit on the same day, which was witnessed. Filed in evidence is a copy of the Notice and a copy of Proof of Service.

The landlord testified that the tenant did not pay the outstanding rent within five days and the tenant did not make an application to dispute the Notice.

The landlord testified that the tenant did pay the outstanding rent on February 26, 2021, by leaving cash at their residence, which was outside the statutory time limit. The landlord stated that they then sent the tenant a receipt by mail, that the rent was accepted for use and occupancy as they were not reinstating the tenancy.

The landlord testified that the tenant has cut-off all communication, as the tenant will not answer the door of the rental unit, answer their telephone calls, and not accept registered mail.

The landlord testified that the tenant has now failed to pay rent for March and April 2021. The seeks to recover unpaid rent in the amount of \$1,600.00.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the Notice, I find the Notice complies with section 52 of the Act.

The tenant was served the Notice by posting to the door on February 5, 2021. Section 90 of the Act determines that a document served in this manner is deemed to have been served, three days later. I find that the tenant was duly served in accordance with the Act on February 8, 2021.

Under section 46 of the Act, the tenant had until February 13, 2021 to pay the outstanding rent or to apply to dispute the Notice. The evidence of the landlord was that rent was paid on February 26, 2021. I find the tenant did not pay the outstanding rent

within the statutory time limit of five days. Therefore, the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, 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. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I accept the evidence of the landlord that the tenant has failed to pay rent for March and April 2021. I find the tenant has breached section 26 of the Act. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,600.00**.

I find that the landlord has established a total monetary claim of **\$1,700.00** comprised of unpaid rent and the \$100.00 fee paid by the landlord for this application. I grant the landlord an order pursuant to section 67 of the Act. This 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 tenant failed to pay rent within the statutory time limit 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, and a monetary order in the above noted amount.

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 09, 2021

Residential Tenancy Branch