



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 based on unpaid rent, a monetary order for unpaid rent, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

An Agent for the Landlord appeared, 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 Agent for the Landlord testified and provided evidence that the Tenant was served with the Application and Notice of Hearing, in person on February 17, 2012. The service was witnessed by a third party and the Tenant signed a receipt acknowledging he had received the documents. Despite this, the Tenant did not appear at the hearing. I find the Tenant has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the testimony and evidence of the Agent and the Landlord, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on February 2, 2012, by posting on the rental unit door, which was witnessed.

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.

The Agent for the Landlord testified that at the time of the Notice the Tenant owed a balance of \$10.00 in rent for January, a late fee of \$25.00 for January, and \$850.00 for

February rent. On February 11, 2012, the Tenant paid \$390.00 in rent, and was informed this was for use and occupancy only. The Agent further testified that the Tenant failed to pay the March 2012 rent of \$850.00.

The 10 day Notice for unpaid rent had an effective date of February 14, 2012, however, the Tenant has refused to vacate the rental unit and has failed to pay all rent due.

Analysis

Based on the above, the testimony and evidence, 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 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 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 \$1,370.00 comprised of \$10.00 in rent for January, \$460.00 for the balance of February rent, \$850.00 for March rent and the \$50.00 fee paid by the Landlord for this application. I do not allow the late fee, as the Landlord failed to provide this page of the tenancy agreement indicating a penalty was payable.

I order that the Landlord retain the security deposit of \$425.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$945.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, except as 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 06, 2012.

Residential Tenancy Branch