



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession for unpaid rent, a monetary order for unpaid rent and late fees, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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

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

Background and Evidence

Based on the testimony of both parties, I find that the Tenants were served with a 10 day Notice to End Tenancy for non-payment of rent on February 10, 2012. The appearing Tenant acknowledges receipt of the Notice on that date.

The 10 day Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The 10 day Notice also explains the Tenants had five days to dispute the Notice.

The 10 day Notice was for \$1,019.95, comprised of February rent in the amount of \$995.00, a balance of rent owed for January 2012, and a late fee of \$20.00 under the tenancy agreement.

The Tenant agrees she has not paid March 2012 rent.

The Tenant argued that she has paid February 2012 rent and has a receipt for this payment. The Tenant did not submit this in evidence, despite the information provided to her in the 10 day Notice and the Notice of Hearing. The Tenant testified she did not

read these documents and did not know she had to provide evidence to support her arguments.

The Agent for the Landlord testified she has no record of the February rent being paid.

Analysis

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

The Tenants have not provided evidence that the outstanding rent claimed has been paid. The Tenants should have applied to dispute the Notice, if they felt they had paid the February rent. The 10 day Notice to End Tenancy has clear warnings to the Tenants that the tenancy is in jeopardy due to non-payment of rent.

As the Tenants did not apply to dispute the Notice they are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Therefore, I find that the Landlord is entitled to an order of possession 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.

I find that the Landlord has established a total monetary claim of **\$2,084.95**, comprised of the \$1,019.95 described above, \$995.00 for the rent for March 2012, a \$20.00 late fee for March, and the \$50.00 fee paid by the Landlord for this application.

I grant the Landlord an order under section 67 for the balance due. 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 08, 2012.

Residential Tenancy Branch