



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For an order of possession; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a notice to end tenancy for unpaid rent.

Tenants' application

This matter was set for hearing by telephone conference call at 11:30 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenants did not attend the hearing by 11:40 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenants' application without leave to reapply.

Landlord's application

The landlord writes in the application that the tenant (CM) was served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on January 4, 2013, a Canada post tracking number was provided as evidence of service, the tenant (CM) did not appear.

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 tenant (CM) has been duly served in accordance with the Act.

The landlord stated the tenant (VM) on the tenants' application is not a party to her claim, as the unit rented by the tenant (VM) is under a separate agreement and a hearing with that tenant is scheduled for a later date in January 2013. As a result, the landlord's application proceeded against the tenant (CM).

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

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

Is the landlord entitled to recover the cost of filing the application?

Background and Evidence

The tenants acknowledged in their application that they received the notice to end tenancy, on December 29, 2012. The notice informed the tenants 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 landlord testified the tenancy began on October 1, 2012, and the tenant has not paid any rent and did not pay a security deposit. The landlord seeks to recover unpaid rent for October, November, December 2012 and January 2013, and current rent arrears are \$5,200.00.

The landlord testified she is seeking compensation for February 2013, rent.

Analysis

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

In this case, the tenants applied to dispute the Notice within five days as required by the Act, the tenants did not appear and the tenants' application to cancel the notice was dismissed. Further, the tenants admit in their application that rent has not been paid as required by the notice. As a result, the tenants' application had no merit.

Therefore, pursuant to section 55, of the Act, I find the landlord is entitled to an order of possession 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 landlord is seeking unpaid rent for February, 2013. As rent for February is not due, I find this portion of the claim to be premature. The landlord is at liberty to reapply.

I find that the landlord has established a total monetary claim of \$5,300.00 comprised of unpaid rent for October, November, December 2012, January 2013 and the \$100.00 fee paid by the landlord for this application. I grant the landlord an order under section 67 for the above balance.

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

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord is granted an order of possession.

The landlord is granted a monetary order in the above balance.

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: January 28, 2013

Residential Tenancy Branch

