



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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, and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. Shee gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified she personally served the Tenant with the Notice of Hearing and their Application on November 18, 2014.

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.

Issues 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

The Landlord testified as to the terms of the tenancy.

The tenancy began February 1, 2012. Monthly rent was payable in the amount of \$960.00. A security deposit in the amount of \$480.00 was paid on February 1, 2012.

The Tenant failed to pay rent for the months of October and November 2014. The Landlord issued and personally served a 10 day Notice to End Tenancy for non-payment of rent on November 10, 2014 indicating the amount of \$1,920.00 was due as of October 1, 2014 (the "Notice").

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, November 15, 2014; as November 15 is a Saturday, the time for doing so is extended to the following Monday, November 17, 2014. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord testified that the Tenant vacated the rental unit on December 3, 2014. As such, the Tenant is liable for the December 2014 rent as well. The Landlord sought an Order for rent for October, November and December 2014.

The Landlord also requested an Order for payment of outstanding utilities. The Landlord failed to provide a copy of the residential tenancy agreement, therefore, the Landlord failed to prove that the Tenant was obligated to pay any amounts towards utilities. Further, the Landlord failed to provide any evidence of the outstanding amounts or a demand for payment as required in section 46(6) of the Act.

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.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that 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.

I find that the Landlord has established a total monetary claim of \$2,930.00 comprised of rent owing in the amount of \$2,880.00 and the \$50.00 fee paid by the Landlord for this application. I dismiss the Landlord's request for an order relating to unpaid utilities for the reasons stated above.

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

Conclusion

The Tenant failed to pay rent 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 is granted a Monetary Order for the rent owing for October, November and December 2014 as well as the filing fee.

This decision is final and binding on the parties, except as otherwise 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: December 04, 2014

Residential Tenancy Branch

