



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PHS COMMUNITY SERVICES SOC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNR

Introduction and Preliminary Matter

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent.

Only the Landlord's building manager and agent, S.H. (hereinafter referred to as the "Landlord") appeared at the hearing. She 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.

This matter was originally brought forward by the Landlord by way of an Application for Dispute Resolution by Direct Request. By decision dated July 14, 2015, the adjudicator found that the matter could not proceed by direct request because the Landlord's name on the residential tenancy agreement did not match the Landlord's name on the Application for Dispute Resolution, the 10 Day Notice or any other documentation submitted with the Application for Dispute Resolution. The adjudicator further found that there was also no documentation referring to the transfer of responsibilities from the landlord named on the residential tenancy agreement to the landlord applying for dispute resolution.

On August 17, 2015 the Landlord provided to the Branch a document titled "Assignment and Modification of [date] Non-Profit Society Agreement", which confirmed the transfer of responsibilities from the Landlord named on the residential tenancy agreement to the Landlord applying for dispute resolution.

As the Tenant did not attend the hearing, service of the Application materials was considered. The Landlord testified that she served the Tenant with the Notice of Hearing and their Application on July 20, 2015 by registered mail. Under the Act documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of July 25, 2015.

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

Introduced in evidence was a copy of the residential tenancy agreement indicating that the tenancy began April 3, 2012. According to the Landlord, rent was determined in accordance with the Tenant's income. At the start of the tenancy, monthly rent was payable in the amount of \$495.00. At the time of the hearing, rent was payable in the amount of \$260.00. Introduced in evidence were documents which confirmed the annual calculation of rent and the current rent of \$260.00.

The Landlord testified that the Tenant failed to pay rent for the month of June 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on June 23, 2015 indicating the amount of \$260.00 was due as of June 1, 2015 (the "Notice").

Based on the testimony of the Landlord, I find that the Tenant was served with the Notice on June 23, 2015 by posting to the rental unit door. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of June 26, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, July 1, 2015. 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. As July 1, 2015 is a federal holiday, the Tenant had until July 2, 2015 to pay the rent in full or make their application.

The Landlord testified that the Tenant did not pay the rent in full and did not make an application for dispute resolution. As well, the Tenant failed to pay rent for July 2015, August 2015, and September 2015. Accordingly, the Landlord sought an Order of Possession and a Monetary Order for \$1,040.00 for outstanding rent.

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 **\$1,040.00** comprised of outstanding rent for June, July, August and September 2015 and I grant the Landlord a Monetary Order pursuant to section 67 of the Act for \$1,040.00. 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, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a Monetary Order for the balance due.

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: September 17, 2015

Residential Tenancy Branch

