



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 was convened by conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for: an Order of Possession and a Monetary Order for unpaid rent; for monetary compensation for damage or loss under the *Residential Tenancy Act* (the "Act"); and to recover the filing fee from the Tenant.

Preliminary Issues

The Landlord appeared for the hearing with an agent who also acted as a translator. The Landlord provided affirmed testimony through the translator. The Landlord also provided documentary and digital evidence prior to the hearing.

However, there was no appearance for the Tenant during the ten minute duration of the hearing or any submission of evidence prior to the hearing. As a result, I turned my mind to the service of the documents by the Landlord.

The Landlord testified that she personally served the Tenant with a copy of the Application and the Notice of Hearing documents on November 19, 2015. Therefore, based on the disputed evidence before me, I find the Landlord served the Tenant with the required documents for this hearing in accordance with Section 89(1) (a) of the Act.

The Landlord also wanted to claim for unpaid rent relating to the months of December 2015 and January 2015 which were also unpaid by the Tenant since the time of making this Application. Therefore, pursuant to Section 64(3) (c) of the Act, I amended the Landlord's Application to increase the monetary claim amount from \$575.00 to \$1,725.00.

The Landlord also provided a copy of a notice to end tenancy for cause as well as digital and documentary evidence relating to this notice. The Landlord was informed that

she had only applied for an Order of Possession for unpaid rent and therefore I dealt with this matter first.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on September 15, 2015. A written tenancy agreement was signed for a month to month tenancy. Rent in the amount of \$575.00 is payable on the first day of each month.

The Landlord explained that she took from the Tenant a \$250.00 security deposit on October 14, 2015. However, the Tenant began to cause problems from the onset of the tenancy and as a result, the Landlord asked the Tenant to vacate the rental unit. The Landlord testified that the Tenant stated that she would not leave until her security deposit was returned to her. The Landlord returned the \$250.00 security deposit back to the Tenant and the Tenant signed a document to verify this, which was provided into evidence. However, the Tenant failed to move out of the rental unit.

The Landlord testified that the Tenant then failed to pay rent for November 2015. As a result, she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on November 6, 2015 by attaching it to the Tenant's door. The Notice was provided into evidence and shows a vacancy date of November 17, 2015 due to \$575.00 in unpaid rent. The Landlord also provided a Proof of Service document which was signed by a witness to verify this manner of service.

The Landlord testified that in addition, the Tenant has failed to pay rent for December 2015 and January 2016. Therefore she now seeks an Order of Possession and a Monetary Order in the amount of \$1,725.00.

Analysis

I have carefully considered the undisputed affirmed testimony and the documentary evidence before me in this decision as follows. Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act.

Sections 46(4) and (5) of the Act state that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the undisputed evidence oral and written evidence that the Notice was served to the Tenant by attaching it to the rental unit door on November 6, 2015.

Section 90(c) of the Act provides that a document served by attaching it to the door is deemed to have been received three days later. Therefore, I find the Tenant was deemed to have received the Notice on November 9, 2015 pursuant to the Act. As a result, the vacancy date on the Notice is corrected to November 19, 2015 pursuant to Section 53 of the Act.

There is no evidence before me that the Tenant either paid the outstanding rent on the Notice or made an Application to dispute it within the stipulated five day time limit provided by the Act. As a result, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected vacancy date of the Notice.

As the corrected vacancy date on the Notice has now passed, the Landlord is granted a two day Order of Possession. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

In relation to the Landlord's monetary claim for unpaid rent, I accept the Landlord's undisputed oral and written evidence that the Tenant failed to pay rent for November and December 2015, and for January 2016. Accordingly I award the Landlord **\$1,725.00** in unpaid rent.

As the Landlord has been successful in this claim, I also award the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the Landlord is issued with a Monetary Order for **\$1,775.00**. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court if the Tenant fails to make payment. Copies of both orders for service and enforcement are attached to the Landlord's copy of this decision.

As the tenancy has now been ended through the Notice which related to unpaid rent, I did not make any legal findings on the notice to end tenancy for cause; although I note that this was not a matter the Landlord had applied for on her Application.

Conclusion

The Tenant has breached the Act by failing to pay rent. Therefore, the Landlord is granted a two day Order of Possession and a Monetary Order for \$1,775.00.

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 13, 2016

Residential Tenancy Branch

