



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 convened as a result of 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.

Initially only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he served the Tenant with the Notice of Hearing and his Application on December 18, 2015 by registered mail. The Landlord provided the registered mail tracking number in evidence and testified that to his knowledge the registered mail package was retrieved by the Tenant. Under the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of December 23, 2015.

After 17 minutes the Tenant called into the hearing. He claimed that he had called in at 9:00 a.m. and had been waiting on hold, after which time he decided to call back in. He gave affirmed testimony and was provided the opportunity to present his evidence orally and make submissions to me. He did not file any documentary evidence.

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, as follows: the tenancy began February 2015; monthly rent was payable in the amount of \$1,150.00; and a security deposit in the amount of \$575.00 was paid on February 1, 2015.

The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on November 12, 2015 indicating the amount of \$7,050.00 was due as of November 1, 2015 (the "Notice").

Based on the testimony of the Landlord, and the Proof of Service—Notice to End Tenancy, filed in evidence, I find that the Tenant was served with the Notice on November 12, 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 November 15, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, November 20, 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.

The Landlord testified that the Tenant also failed to pay rent for December 2015 or for January 2016 such that at the time of the hearing the sum of \$9,000.00 was owing for rent.

The Landlord testified that a previous hearing occurred in July of 2015, as a result of the Tenant's Application to dispute a previous Notice to End Tenancy. The Landlord failed to attend the hearing and the Tenant was credited \$50.00 towards his next rent payment as compensation for the filing fee. Accordingly, and taking into account this \$50.00 credit, at the time of the present hearing, the amount owing to the Landlord was **\$8,950.00**.

The Tenant testified on his own behalf. He agreed that the sum of \$8,950.00 is owed for rent. He stated that he trusted the Landlord's calculation as to this amount. He also stated that he had a difficult time financially during the past year, had been in hospital at least once, and that he has been trying to find alternate accommodation.

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, while the Tenant may have had some financial difficulty during 2015, 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 also find that the Landlord has established a total monetary claim of **\$9,000.00** comprised of \$9,000.00 in outstanding rent, recovery of the \$50.00 fee paid by the Landlord for this application, less the \$50.00 credit to the Tenant from the previous hearing. I grant the Landlord a Monetary Order under section 67 for the amount of **\$9,000.00**

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, and is granted a Monetary Order for the amount of **\$9,000.00**.

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: January 27, 2016

Residential Tenancy Branch

