



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes opr, mnr

Introduction

The landlord has applied for dispute resolution of a dispute in the tenancy at the above noted address, and requests an Order of Possession and a Monetary Order for unpaid rent.

Both parties attended the hearing. The tenant acknowledged having been served with the landlord's Application for Dispute resolution hearing package, as well as the 10 Day Notice to End Tenancy.

Issues to Be Decided

- Is the 10 day Notice to End Tenancy effective to end this tenancy and entitle the landlord to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent due and payable by the tenant to the landlord?

Background and Evidence

This tenancy began April 5, 2016. Rent is due on the 1st day of each month in the amount of \$2,200.00. The tenant fell behind in his rent, and on December 19, 2016 the landlord served the tenant with a 10 Day Notice to End Tenancy. At that time the amount of rent in arrears was \$2,400.00 (\$200.00 owing from November, and \$2,200.00 for December's rent). The landlord testified that he received a partial rent payment of \$440.00 from a male occupant at the premises on December 22, 2016.

The tenant alleged that he fell behind in rent, as a result of not losing a contract with the landlord to do demolition work. The tenant testified that the landlord also received a further \$400.00 from another female occupant in January. The landlord did not know if this was true or not, The tenant and other occupants remain in possession of the premises.

Analysis

The issue of whether or not the landlord reneged or in some way improperly withdrew a contract with the tenant for demolition work is a commercial or contractual matter, over which I have no jurisdiction. This is not a situation, for example, where the tenancy

agreement specifically permitted an offset of rent from money's owed under a work contract as between the landlord and tenant.

Section 26(1) (as well as the tenancy agreement) specifically required that the tenant pay rent when it is due, and section 46(1) permitted the landlord to serve the tenant with a 10day Notice to End Tenancy when he fell into arrears. In the absence of the tenant satisfying the full rental arrears, or disputing the notice within the 5 day period set out in the Notice, the tenant is conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice, by virtue of section 46(5)(a) of the Residential Tenancy Act. As that effective date of the Notice has passed, the landlord has established a right to possession. I therefore issue an Order of Possession effective 48 hours following service upon the tenant.

Regarding the issue of the alleged payment of \$400.00 in January, the tenant's testimony is more reliable than that of the landlord, and I therefore find that the landlord has failed to establish that the full rent for January is owed. The proven loss of rent for January is therefore \$1,800.00.

The rent owing by the tenant therefore includes:

\$200 for November;

\$1,760 for December (\$2,200.00 less \$440.00); and

\$1,800 for January (\$2,200.00 less \$400.00).

These sums amount to \$3,760.00, and the tenant must pay this sum to the landlord. Should the landlord suffer any further loss of rental income, he is at liberty to make further application once such loss is quantified.

Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement. The landlord is issued a Monetary Order of \$3,760.00, representing the awarded rental arrears.

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: February 02, 2017

Residential Tenancy Branch