



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FFL

Introduction

On June 20, 2018, the Landlord submitted an Application for Dispute Resolution under the “*Residential Tenancy Act*: (“*the Act*”) for an order of possession; for a monetary order for unpaid rent or utilities; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord’s agent (“the Landlord”) attended the teleconference hearing; however, the Tenants did not. The Landlord provided affirmed testimony that the Tenants were served the Notice of Dispute Resolution Proceeding using registered mail on June 21, 2018. The Landlord provided the registered mail tracking numbers as proof of service. I find that the Tenants were served with notice of the hearing documents pursuant to sections 89 and 90 of the Act. The Tenants are deemed served the Notice of Dispute Resolution Proceeding on June 26, 2018, the fifth day after it was mailed.

The Landlord was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified to the following terms of the tenancy: the tenancy began on October 11, 2017, as a fixed term tenancy that ends on November 30, 2018. Rent in the amount of \$1,400.00 is due each month. The Landlord testified that rent was due on the first day of each month. There was no security deposit required or paid. The Landlord provided a copy of the tenancy agreement.

The tenancy agreement is titled as an "Owners Agreement" for the purchase and sale of the premises shown as the dispute address in the Landlord's application. The agreement indicates that the owner may remain in possession of the unit until the vacancy date of November 30, 2018, which is up to 12 months after the closing date. The owner will be required to pay a monthly fee to the purchaser while it remains in possession of the unit.

Clause 4 of the agreement indicates that each party acknowledges and agrees that it does not, by entering into the agreement intend to create a tenancy or a tenancy agreement between the owner and purchaser, and the owner expressly acknowledges and agrees that in no event will he or she be deemed or construed to be a Tenant of the unit, it merely being the intention of the parties that the date for vacant possession be delayed to the vacancy date.

Clause 4 of the agreement provides that in the event that any court or tribunal (including the Residential Tenancy Branch) finds that the owner is a Tenant of the unit, or that the Act applies to the owner's occupation of the unit, then there will be deemed to be a fixed term tenancy agreement between the owner and purchaser and that the end of the tenancy will be the vacancy date and the owner will vacate on the vacancy date.

The Landlord testified that she believes the agreement is a tenancy agreement. The Landlord testified that the Tenant did not pay rent of \$1,400.00 owing for the month of June 2018.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 11, 2018, ("the 10 Day Notice").

The Landlord testified that the Tenant was served with the 10 Day Notice by posting the Notice on the Tenants door on June 11, 2018.

The Notice states that the Tenant has failed to pay rent in the amount of \$1,400.00 which was due on June 1, 2018. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

There is no evidence before me that that the Tenant made an application to dispute the Notice. The Landlord testified that the Tenant did not pay the amount owing within 5 days of receiving the 10 Day Notice.

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$1,400.00.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

The Tenant was deemed served with notice of the hearing and failed to attend. The Landlord's submissions were unopposed.

I have considered the "owners agreement". Despite the intention of the parties that there is no tenancy or a tenancy agreement and that it was simply an agreement to extend the possession date; I find that the parties contemplated that the Residential Tenancy Branch may find that the owner is a Tenant and that there may be a tenancy agreement.

I find that when the sale of the property closed, the purchaser became the owner, and the previous owner became a Tenant entitled to occupy the rental unit subject to terms and conditions of the agreement which includes the payment of monthly rent. I find that "owners agreement" is on a fixed term basis and the parties agreed that the Tenant will vacate on the vacancy date. I find that the living arrangement is a tenancy agreement and that the Act applies to the agreement.

Based on the Landlord's affirmed testimony that the rent was due by the first day of each month, I find that the Tenant received the 10 Day Notice on the third day after it was attached to the door and did not pay the rent owing under the agreement within 5 days of receiving the Notice.

I also find that the Tenant did not did not apply to dispute the 10 Day 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.

Since the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, 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. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant failed to pay the rent owing under the tenancy agreement. I find that the Tenant owes the Landlord \$1,400.00 for unpaid June 2018, rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$1,500.00 comprised of \$1,400.00 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing.

I grant the Landlord a monetary order in the amount of \$1,500.00 for unpaid rent and the cost of the application.

Conclusion

The Tenant failed to pay the rent due under the tenancy agreement and did not file to dispute the 10 Day Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective 2 days after service on the Tenant and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$1,500.00.

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: September 26, 2018

Residential Tenancy Branch