



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act, (the “Act”), for an order of possession, for a monetary order for unpaid rent, for an order to retain the security deposit and an order to recover the cost of filing the application from the tenant.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In the evidence submitted by the tenant they are claiming monetary compensation; however, that is not an issue for me to consider as no formal application is before me. The tenant does have a hearing on this matter on May 14, 2021, which that evidence will be considered, if it has been submitted on that application, and properly served.

The only issue for me to determine are those made in the landlord’s application as that is the only application for dispute resolution that is before me.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary for unpaid rent?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

The tenant testified that they received the Two Month Notice to End Tenancy for Landlord’s Use of Property, (the “Notice”) issued on November 9, 2020, by text message and later again by registered mail. It was confirmed at the hearing that the tenant did not make a formal application disputing this notice to end tenancy.

The tenant stated they have not been living in the rental unit; however, they have not given vacant possession of the premise to the landlords as they still have their personal belongings there.

The landlords testified that the tenant did not pay rent for January 2021, and that is considered their compensation under the Act. The landlords testified that the tenant did not vacate the rental unit on January 31, 2021, as required by the Notice, and the tenant has not paid rent for February and March 2021.

The landlords testified that they seek an order of possession and a monetary order for unpaid rent. Filed in evidence is a copy of the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the evidence of the landlord that the Notice was completed in accordance with Part 4 of the Act - How to End a Tenancy, pursuant to section 49 of the Act. A copy of the Notice was filed in evidence for my review and consideration.

I find the Notice was completed in the approved form and the contents meets the statutory requirements under section 52 the Act.

Further, I accept the evidence of the tenant that they were served with the Notice in compliance with the service provisions under section 88 of the Act, which the tenant acknowledged they received the Notice by registered mail.

I am satisfied based on the evidence of both parties that the landlord has met the statutory requirements under the Act to end a tenancy.

The tenant did not apply to dispute the Notice and therefore conclusively presumed under section 49(9) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on January 31, 2021, and the tenant is overholding the premise on an occupancy basis.

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 am further satisfied that the tenant has received compensation under the Act for receiving the Notice, as rent for January 2021, was not paid and the tenant was entitled withhold the rent for this reason.

I am further satisfied that the tenant has not paid subsequent rent for February and March 2021. I find the tenant had no authority under the Act not to pay subsequent rent due under their tenancy agreement. While the tenant may not be staying in the rental unit; however, they still have not given vacant possession to the landlord as they still have their personal belongings there.

I find the tenant has breached the Act when they failed to pay rent. Therefore, I find the landlord is entitled to recover unpaid rent for February and March 2020 in the total amount of **\$2,600.00**.

I find that the landlords have established a total monetary claim of **\$2,700.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$700.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$2,000.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant failed to dispute the Notice. 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 may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due..

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: March 09, 2021

Residential Tenancy Branch