



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MND, MNDC, O, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord. The tenant did not attend.

The landlord testified she served the tenant with the Notice of Hearing package on January 15, 2010.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; compensation for repairs to the rental unit; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 32, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement for a month to month tenancy beginning on August 1, 2009 for the monthly rent of \$750.00 plus \$100.00 for utilities due on the 1st day of the month and a security deposit of \$375.00 was paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 2, 2010 with an effective vacancy date of January 12, 2010 due to \$850.00 unpaid rent;
- A copy of a hand written notice from the tenant to the landlord dated January 4, 2010 giving one month's notice as of February 1, 2010;
- A photograph of the condition of the rental unit kitchen prior to fire;
- A breakdown of the landlord's total claim;
- An estimate for restoration of the rental unit kitchen from a local contractor, in the amount of \$3,786.09; and
- 7 photographs showing the smoke and fire damage to the kitchen.

Documentary and testimonial evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of January and February, 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the tenant on January 2, 2010. The landlord has provided written confirmation that this service was witnessed by a third party.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

The landlord testified the tenant paid \$600.00 on January 7, 2010 and \$240.00 on January 27, 2010, leaving an outstanding balance for January, 2010 of \$10.00. The landlord also testified the tenant has not paid rent for February 2010.

The landlord testified that the tenant had an oil fire in the kitchen of the rental unit in September, 2009, in an attempt to put the fire out he threw water on the fire which caused considerable damage to the kitchen. The landlord stated that the tenant had made promises since the fire that he would start cleaning up the kitchen – but to date nothing has been repaired.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on January 2, 2010 and the effective date of the notice is January 12, 2010. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Section 32(3) of the *Act* requires a tenant to repair damage to the rental unit that is caused by the actions or neglect of the tenant. In the absence of any contrary evidence or testimony, I find the tenant is required to repair the damage caused by the kitchen fire in September 2009.

I also find that the landlord has provided the tenant with more than sufficient time in order to complete the restoration or repairs but the tenant has failed to make any attempt at all. As such, I find the landlord has provided sufficient evidence to show that:

1. Damage exists;
2. The damage results from a violation of the *Act* on the tenant's behalf; and
3. Establishes the value of the damage.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$4,696.09** comprised of \$860.00 rent owed; \$3,786.09 costs for repairs and restoration; and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 19, 2010.

Dispute Resolution Officer