



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and/or for cause; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord has submitted the following documents into evidence:

- A copy of a tenancy agreement and addendum signed by the parties on February 6, 2010 for a 1 year fixed term tenancy beginning on February 10, 2010 for a monthly rent of \$1,800.00 due on the 1st of the month with a security deposit of \$900.00 and a pet damage deposit of \$500.00 paid on February 10, 2010;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on May 6, 2010 with an effective vacancy date of May 22, 2010 due to \$1,800.00 in unpaid rent due May 1, 2010;
- A copy of a receipt for registered mail dated May 7, 2010;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on June 2, 2010 with an effective vacancy date of June 17, 2010 due to \$1,800.00 in unpaid rent due June 1, 2010;
- A copy of a receipt for registered mail dated May 7, 2010;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on October 16, 2010 with an effective vacancy date of October 26, 2010 due to \$1,800.00 in unpaid rent;
- Written confirmation that the landlord served the tenant with the October 10 Day Notice to End Tenancy for Unpaid Rent personally on October 16, 2010 at 1:00 p.m. and that this service was witnessed by a third party;

- A copy of a 1 Month Notice to End Tenancy for Cause dated October 16, 2010 with an effective date of November 15, 2010 citing the tenant is repeatedly late paying rent; and
- A copy of a tenant ledger showing payment dates throughout the tenancy indicating that rent has been late every month except for August and September 2010.

The landlord testified that she did not receive October 2010 rent from the tenant but was able to cash his post-dated for November 1, 2010 rent cheque and as such she has received rent for November 2010.

The tenant acknowledges that he has moved out of the rental unit but still has possessions left there

Analysis

As the tenant did not file an Application for Dispute Resolution to dispute the 10 Day Notice or pay the rent due within 5 days of receipt of the notice, I find that in accordance with Section 46(5) the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the notice and he should have vacate the property at that time.

As the tenant remained in the rental unit beyond November 1, 2010 I find that he is responsible for the rent owed on that date in accordance with Section 26 of the Act. As both parties acknowledge that November 2010 rent has been paid, I find the landlord is entitled to rent for the month of October 2010.

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 grant a monetary order in the amount of **\$1,850.00** comprised of \$1,800.00 rent owed 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: November 17, 2010.

Dispute Resolution Officer