



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 an Order of Possession and a Monetary Order for unpaid rent. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order?

Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced August 1, 2006. The tenancy agreement provides that the tenant was required to pay rent of \$720.00 on the 1st day of every month. The rent had since been increased to \$746.00 per month. The tenant paid a \$360.00 security deposit in 2006. Rent was not paid for the month of October 2010. The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent upon the tenant's roommate on October 12, 2010 indicating rent of \$746.00 was outstanding as of October 1, 2010. The tenant was admitted to the hospital on an undisclosed date and was still in the hospital as of the date of the hearing.

The landlord testified that on October 25, 2010 the landlord removed the possessions from the rental unit and has placed them in storage. The landlord explained that he believed it was within his rights to take possession of the unit five days after sending the tenant the hearing documents via registered mail.

The tenant acknowledged receiving the 10 Day Notice from his roommate. The tenant was agreeable to paying the rent owed for the month of October 2010.

Provided as documentary evidence for this hearing was a copy of the 10 Day Notice and a copy of the tenant's rent cheque which the landlord claimed had been returned for insufficient funds. The landlord requested recovery of the unpaid rent and a \$50.00 NSF fee.

Analysis

As I heard the landlord has already regained possession of the rental unit an Order of Possession is no longer required and I do not provide one with this decision. The landlord was cautioned during the hearing that the landlord did not have the legal right to take possession of the rental unit on October 25, 2010.

Having heard from the parties I find the landlord is entitled to recover unpaid rent from the tenant for the month of October 2010. I do not find the landlord provided sufficient evidence to show that the tenancy agreement provides for payment of an NSF fee. Even if the tenancy agreement provides for payment of an NSF fee such fees are limited to \$25.00 by the Residential Tenancy Regulation and not \$50.00 as claimed by the landlord.

I authorize the landlord to retain the tenant's security deposit and interest in partial satisfaction of the rent owed. I calculate the interest on the security deposit is \$11.68. I do not award the filing fee to the landlord in this case as the landlord took it upon himself to take possession of the rental unit before obtaining an Order of Possession.

In light of the above findings the landlord is provided with a Monetary Order in the amount of \$374.32 to serve upon the tenant [\$746.00 rent - \$360.00 security deposit - \$11.68 interest on security deposit].

Conclusion

The landlord has regained possession of the rental unit and an Order of Possession is no longer required. The landlord is authorized to retain the security deposit and is provided a Monetary Order for the balance of \$374.32 to serve upon the tenant.

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 25, 2010.

Dispute Resolution Officer