



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order and to recover the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on November 18, 2010, the Tenant did not appear.

An agent for the Landlord appeared, gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the affirmed testimony of the Agent for the Landlord, I find that the Tenant was served with a 10 day Notice to End Tenancy for Unpaid Rent on November 5, 2010, by posting on the door. 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. I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to November 18, 2010.

The Tenant did not apply to dispute the Notice. The Landlord provided evidence and gave affirmed testimony that the Tenant did not pay the November rent due and currently owed for November, December and January, 2011.

Analysis

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

Although the Landlord is entitled to an order of possession in these circumstances, the Tenant has vacated the rental unit and therefore, an order of possession is no longer required.

The Tenant has not paid the outstanding rent and did not apply to dispute the 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.

I allow the Landlord to amend their Application to include a claim to retain the security deposit in partial satisfaction of the claim. I do not allow the Landlord's claim for the January 2011 rent.

I find the Landlord attempted to mitigate their loss by immediately advertising to re-rent the rental unit, but have been unsuccessful. Therefore I find that the Landlord has established a total monetary claim of **\$2,490.00** comprised of \$2,400.00 in rent for the months of November and December, \$40.00 for two late fees, and the \$50.00 fee paid by the Landlord for this application. I order that the Landlord retain the deposit of **\$600.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,890.00**.

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

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. 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 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: December 09, 2010.

Dispute Resolution Officer