



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and damage or loss under the Act, regulations or tenancy agreement. 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

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent or damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced October 1, 2010 and the tenants paid a \$487.50 security deposit. The tenants are required to pay rent of \$975.00 on the 1st day of every month. The tenancy agreement provides for a late fee of \$20.00. The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenants' door on November 2, 2010. The Notice indicates \$995.00 was outstanding as of November 1, 2010 and had an effective vacancy date of November 12, 2010.

The landlord testified that the \$995.00 indicated on the Notice includes the late fee for November 2010 and the tenants paid \$995.00 on November 23, 2010. The landlord issued a receipt for use and occupancy only. The tenants continue to reside in the unit but have not paid rent for December 2010.

The tenants explained that the male tenant was recently unemployed without notice but the female tenant has recently secured new employment. The tenants assured the landlord that the outstanding rent and late fees owed under the tenancy agreement will be paid but requested more time to catch up on amounts owed the landlord. The tenants agreed to pay the outstanding rent and late fee for December 2010 by December 31, 2010.

The landlord requested a Monetary Order for December rent, late fee and the filing fee. Upon hearing the tenants' intentions to pay the outstanding amount by the end of December 2010 the landlord was agreeable to an Order of Possession effective December 31, 2010 to ensure payment is made or vacant possession is provided by the tenants by that date.

Analysis

Where a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or dispute the Notice. Since the Notice was posted on the door it was deemed to be received three days later on November 5, 2010. Accordingly, the tenants had until November 10, 2010 to pay the outstanding rent or vacate by November 15, 2010.

In this case the tenants paid the outstanding rent for November 2010 more than five days after receiving the 10 Day Notice. As a result, the tenancy legally ended on November 15, 2010 and I am satisfied the landlord permitted use and occupancy until the end of November 2010 upon receiving payment on November 23, 2010. Therefore, I find the landlord entitled to an Order of Possession.

With the landlord's consent, I provide the landlord with a conditional Order of Possession effective December 31, 2010 in order to provide the tenants more time to pay December's rent. If the tenants do not pay the amount owed to the landlord by December 31, 2010 the tenants must vacate the rental unit by that date.

Based upon the undisputed evidence before me, I find the landlord entitled to a Monetary Order calculated as follows:

December 2010 rent	\$ 975.00
Late fee for December 2010	20.00
Filing fee paid for this application	<u>50.00</u>
Monetary Order provided to landlord	\$ 1,045.00

The landlord must serve the Order of Possession and Monetary Order upon the tenants and may enforce the Orders in the appropriate court after December 31, 2010 as necessary.

Conclusion

The landlord has been provided a Monetary Order in the amount of \$1,045.00 to serve upon the tenants. The landlord has been provided a conditional Order of Possession to serve upon the tenants that may be enforced in court if the tenants do not pay the landlord \$1,045.00 by December 31, 2010.

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