



Dispute Resolution Services

Page: 1

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. The tenant did not appear at the hearing. The landlord testified that the hearing documents were personally served upon the tenant at the rental unit on November 19, 2010. I was satisfied the tenant was notified of this proceeding in a manner that complies with section 89 of the Act and I proceeded to hear from the landlord without the tenant present.

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 landlord provided undisputed evidence as follows. The tenancy commenced July 16, 2010 and the tenant paid a \$487.50 security deposit on July 14, 2010. The tenant is 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 tenant's door on November 2, 2010. The Notice indicates \$720.42 was outstanding as of November 1, 2010 and had an effective vacancy date of November 12, 2010.

The landlord testified that the \$720.42 did not include \$13.73 owing for October 2010 rent. The landlord testified that the tenant made a payment of \$621.00 on November 5, 2010, a payment of \$140.00 on November 23, 2010 and a payment of \$808.58 on December 1, 2010. The landlord is seeking a Monetary Order for the balance of the loss of rent for December 2010 in the amount of \$139.57 plus the late fee of \$20.00.

Provided as documentary evidence for this proceeding was a copy of the tenancy agreement, tenant's ledger and 10 Day Notice.

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 effective date on the Notice changes to read November 15, 2010 under section 53 of the Act.

In this case the tenant failed to pay all of the outstanding rent within five days of receiving the 10 Day Notice and I find the tenancy ended November 15, 2010. I find insufficient evidence the landlord reinstated the tenancy. Therefore, I find the landlord entitled to an Order of Possession. I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Upon review of the evidence before me, I find the landlord entitled to recover the balance of the loss of rent for December 2010 in the amount of \$139.57; however, I do not award the late fee as the tenancy has ended November 15, 2010 and the landlord has been provided an Order of Possession. I award the filing fee to the landlord and provide the landlord a Monetary Order calculated as follows:

Balance as of November 5, 2010, per ledger	\$ 113.15
Less: payment November 23, 2010	(140.00)
Less: payment December 1, 2010	(808.58)
Loss of rent December 2010	975.00
Filing fee	<u>50.00</u>
Monetary Order	\$ 189.57

The landlord must serve the Orders upon the tenant and may enforce the Orders in the appropriate court.

Conclusion

The landlord has been provided an Order Possession effective two (2) days after service upon the tenant. The landlord has been a Monetary Order in the amount of \$189.57 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: December 10, 2010.

Dispute Resolution Officer