



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent, utilities and the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order to recover unpaid rent, utilities and the filing fee?

Background and Evidence

The tenancy started on October 01, 2010. The monthly rent is \$1,400.00 due in advance on the first of each month. The rent does not include utilities. The landlord stated that the tenant owed \$100.00 from October and on November 02, 2010 the landlord served the tenant with a ten day notice to end tenancy. The tenant also failed to pay rent for December 2010. On December 11, 2010 the landlord served the tenant with a second notice to end tenancy.

The landlord stated that on December 11, when he served the notice to the tenant, the tenant threatened him with violence. The landlord reported the matter to the police and obtained a no contact order. The landlord contacted the tenant through a mediator, and the tenant threatened the mediator as well. The landlord stated that since December 11, 2010, he has not visited the unit for fear of his safety. The tenant has not informed the landlord of his plans to move out or pay his rent.

The agent for the tenant stated that the tenant moved out around Christmas and was not sure of the date. She stated that the landlord threatened the tenant with violence.

She agreed that the tenant did not return the keys to the landlord or inform him about his plans to move out.

The agent stated that the tenant paid rent for December, in her presence on December 01, 2010. The landlord denied having received rent and the tenant did not have a receipt. The landlord filed copies of the receipts he issued to the tenant along with the outstanding utility bills. One receipt indicates that the tenant paid \$1,300.00 for October's rent and owed the landlord \$100.00.

The landlord has requested an order of possession and a monetary order for unpaid rent, utilities and the filing fee.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant stated that rent for December was paid while the landlord stated that it was not. In the absence of additional evidence to support her claim, I find that on a balance of probabilities, the tenant did not pay rent for December.

Based on the sworn testimony of the both parties, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on December 11, 2010 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice.

Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I also find that the landlord is entitled to the following:

1.	Rent for November	\$100.00
2.	Rent for December and January	\$2,800.00
3.	Hydro	\$77.09
4.	Gas for October and November	\$163.72
5.	Filing fee	\$50.00
	Total	\$3,190.81

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order for **\$3,190.81**.

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: January 17, 2011.

Residential Tenancy Branch