



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords to obtain an Order of Possession, a Monetary Order for unpaid rent and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 31, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on January 05, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover outstanding rent?

Background and Evidence

This tenancy started on November 01, 2010. This is a fixed term tenancy which is due to expire on October 30, 2011. Rent for this unit is \$1,175.00 per month and is due on the first of each month. The tenant paid a security deposit of \$587.50 on November 01, 2010.

The landlord testifies that the tenant has not paid a full months' rent since the start of the tenancy. The tenant paid her first month's rent by cheque but this was returned as there were insufficient funds available (NSF). The landlord testifies that the tenant paid \$875.00 in cash in November and has not paid the balance of rent owed of \$300.00.

The landlord testifies that the tenants rent cheque for December was also returned NSF. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on December 16, 2010. This was given in person to the tenants' son and the landlord testifies that the tenant later rang him and confirmed she had received it. The 10 Day Notice states that the tenant owes rent for November and December 2010 of \$1,475.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 30, 2010. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has not paid rent for January, 2011 to the amount of \$1,175.00 as this rent cheque was also returned NSF. The landlord has provided copies of the returned cheques in evidence and seeks to amend his application to include January's rent and the tenants' share of the Gas bill. The total amount of outstanding rent is now \$2,650.00.

The landlord testifies that the tenancy agreement states the tenant must pay 60% of the utility bills. The landlord states the tenant has not paid her share of these utility bills and now owes \$115.19 for Hydro from October to December, 2010 and \$202.05 for Gas from November to December, 2010. The landlord testifies that he left copies of the utility bills in the tenants' mail slot with her share itemized on the bills. Copies of the bills are provided in evidence.

The landlord has applied for an Order of Possession to take effect as soon as possible and seeks to recover his \$50.00 filing fee from the tenant.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me. Section 26 of the *Act* states a tenant must pay rent on the day it is due under the terms of the tenancy agreement. As rent is due on the first of each month the tenant has failed to make

these payments and I find that the landlord is entitled to recover rent arrears for November and December, 2010 to the sum of **\$1,475.00** pursuant to s. 67 of the *Act*. I also find the landlord is entitled to recover unpaid for January, 2011 as the tenant continues to reside at the rental unit and would be aware that rent was also due on January 01, 2011. Therefore, the landlords' monetary claim has been amended and he is entitled to recover **\$1,175.00** in unpaid rent for January, 2011 from the tenant pursuant to s. 67 of the *Act*.

It is my decision that the tenant was aware that she must pay 60% of the utility bills and despite the landlord having left these for the tenant she has still failed to pay them. Consequently, I find the landlord is entitled to recover the cost of the tenants' share of the utilities from the tenant at a sum of **\$317.24** pursuant to s. 67 of the *Act*

As the landlords have been successful in this matter, he is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a monetary order for the balance owing as follows:

Outstanding rent for November and December 2010 and January, 2011	\$2,650.00
Subtotal	\$2,967.24
Plus filing fee	\$50.00
Total amount due to the landlords	\$3,017.24

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,017.24**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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 20, 2011.

Residential Tenancy Branch