



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application on January 14th, 2011, for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent and to keep the security deposit; and to recover the filing fees associated with this application. On January 7th, 2011, the landlord made an application for dispute resolution regarding the same tenancy and for the same issues as those made in this hearing, and another hearing has been scheduled for May 13th, 2011 at 3:00p.m. Accordingly, to avoid duplication this decision will apply to both applications and attendance at the May 13th, 2011 hearing is not required.

The landlord participated in the hearing and provided affirmed testimony. She testified that he served the Notice of a Dispute Resolution Hearing to the tenants by way of registered mail sent on July 15th, 2011. The tenant did not participate and the hearing proceeded in the tenant's absence.

At the outset, the landlord stated that the tenant moved out of the rental unit early January 2011. Therefore the landlord's application for an Order of Possession is dismissed.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order?

Background and Evidence

The rental unit consists of detached home in Richmond. Pursuant to a written agreement, the month to month tenancy started in April 2007. The monthly rent of \$1030.00 was payable on the first of each month. The tenant paid a security deposit in the amount of \$950.00.

The landlord testified that the tenant returned to Montreal without notice or leaving a forwarding address. The landlord stated that the tenant was a drywall contractor, and that he had difficulty paying the rent. The landlord said that he owed partial rent for October 2010, but failed to pay rent or utilities for November, December and January 2011. In her evidence, the landlord provided a spreadsheet showing the tenant's outstanding debt of \$3960.16.

Analysis

I accept the landlord's undisputed testimony that she served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a Notice to End Tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution.

Based on the available evidence, I find that the landlord is entitled to a Monetary Order as claimed.

Conclusion

Pursuant to Section 67 of the Act, I authorize the landlord to retain the tenant's security deposit for a balance of \$3010.16. Since she was successful, I grant the landlord recovery of the \$50.00 filing fee for a monetary claim totalling \$3060.16.

This Order may be registered in the Small Claims 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 31, 2011.

Residential Tenancy Branch