

DECISION

Dispute Codes OPR, OPC, OPB, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although we waited until 11:16 to enable her to participate. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she handed the tenant a 1 Month Notice to End Tenancy for Cause on December 15, 2010. She testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on January 3, 2011. Her husband testified that he witnessed her post this notice. The landlord entered written evidence that she sent a copy of the dispute resolution hearing package by registered mail to the tenant's last known address on January 21, 2011. She provided a Canada Post Tracking Number to confirm this mailing. I am satisfied that the above documents were served to the tenant in accordance with the *Act*.

At the hearing, the landlord confirmed that the tenant abandoned the rental suite on or about December 20, 2010. However, the landlord said that the tenant called her after the landlord entered the suite to conduct the move-out condition inspection to express concern about the landlord's visit to the rental unit. She testified that some of the tenant's belongings remain in the rental unit. She requested a determination that this tenancy has ended an Order of Possession so that she could clean the rental unit and prepare it for a new tenant.

The landlord's application for dispute resolution was for a monetary award of \$164.00. In her written evidence package, the landlord asked for an additional monetary award of \$448.00, the estimated cost of cleaning the rental unit the tenant has abandoned. As the landlord had not applied for a monetary award for damage or loss arising out of this tenancy and had not identified any amount other than the \$164.00 in unpaid rent in the application for dispute resolution, this issue is not before me. The landlord is at liberty to apply for a monetary award for damage or loss arising out of this tenancy.

Issues(s) to be Decided

Has this tenancy ended? Is it necessary for the landlord to obtain an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this month-to-month tenancy commenced on October 1, 2010. The tenant was responsible for paying a subsidized housing monthly rental of \$164.00, payable on the first of each month. The landlord continues to hold a \$500.00 security deposit plus interest.

The landlord issued the 1 Month Notice to End Tenancy for Cause because she alleged that the tenant was keeping a pet in her rental unit in contravention of the no pet clause in her residential tenancy agreement. In this Notice, she maintained that the tenant had placed the landlord's property at significant risk and that the tenant had breached a material term of the tenancy agreement.

The landlord testified that she issued the 10 Notice to End Tenancy for Unpaid Rent because the tenant did not pay her \$164.00 rent due on January 2011. She testified that she has not received any portion of the amount identified as owing in this Notice. Based on the landlord's method of service delivery, the tenant had until January 17, 2011 to vacate the rental unit.

Analysis

Abandonment of the Rental Unit

Subsection 44(1)(d) of the *Act* establishes that a tenancy ends if the tenant vacates or abandons the rental unit. Based on the undisputed testimony of the landlord, the tenant moved most of her possessions from the rental unit on or about December 20, 2010, has not returned to occupy the rental premises over the past month, and has not paid rent for either January 2011 or February 2011. The tenant did not tell the landlord she was leaving nor did she provide a forwarding address where she could be contacted. She did not apply for dispute resolution regarding the landlord's two notices to end this tenancy and did not attend this hearing or submit any evidence for this hearing.

In accordance with subsection 44(1)(d) of the *Act*, I find that this tenancy has ended and that the landlord does not need to be issued an Order of Possession in order to enter the rental premises, clean and repair it as required, and prepare the rental premises for new tenants. A new tenancy can now begin. No Order of Possession is necessary under these circumstances.

Part 5 of the *Residential Tenancy Regulation* (the *Regulation*) and particularly sections 24 and 25, apply if the tenant has abandoned personal property in the rental unit. For example, subsection 24(1)(b) establishes that the landlord may consider personal property abandoned if the tenant has not ordinarily occupied the rental unit for a continuous period of one month and has not paid rent. Based on the undisputed testimony of the landlord and her witness, I accept that the rental unit has been abandoned and that the landlord may take action with respect to the personal property the tenant has left behind in accordance with Part 5 of the *Regulation*.

Monetary Award

I allow the landlord's application for a monetary award of \$164.00 in unpaid rent for January 2011. Since the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

The landlord has testified that she continues to hold the tenant's \$500.00 security deposit plus interest. No interest is payable over this period. In accordance with the offsetting provisions of section 72(2) of the *Act*, I allow the landlord to retain \$214.00 from the tenant's security deposit to satisfy the monetary award issued to the landlord. The landlord continues to retain \$286.00 from the tenant's security deposit.

Conclusion

I find that this tenancy has ended because the tenant has abandoned the rental unit. Under these circumstances, no Order of Possession is necessary for the landlord to access the rental unit and prepare the rental unit for the next tenant.

I allow the landlord's application for a monetary award of \$164.00 for January 2011. I allow the landlord to recover the \$50.00 filing fee for this application. I allow the landlord to retain \$214.00 from the tenant's security deposit. Based on this finding, the landlord continues to hold \$286.00 from the tenant's security deposit.

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*.