



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 hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order to recover unpaid rent, an Order to keep all or part of the security deposit and to recover the filing fee.

I accept the tenant was served with a copy of the landlords' application and Notice of this hearing. The landlord appeared, gave affirmed testimony, was provided the opportunity to present her 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*.

All of the testimony and documentary evidence was carefully considered. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order to recover the unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit and interest?

Background and Evidence

The landlord testifies that this tenancy started on September 15, 2010. This is a month to month tenancy and rent is \$1,150.00 per month. The landlord testifies that rent is due on the last day of each month. The tenant paid a security deposit of \$575.00 at the start of the tenancy.

The landlord submits that the tenant was given a 10 Day Notice to End Tenancy on December 02, 2010 as she failed to pay rent on the day it was due. The tenant then paid the outstanding rent on December 02, 2010. The landlord submits the tenant gave two cheques for rent for January, 2011 however, these were returned for insufficient funds and another 10 Day Notice was served upon her on January 10, 2011. The tenant paid the outstanding rent on January 10, 2011. The landlord testifies that the tenant did not pay her rent when it was due on the last day of January, 2011 for February, 2011 rent and the landlord served the tenant with another 10 Day Notice to End Tenancy on February 01, 2011 by posting it in the door. This notice states that the tenant owes rent of \$1,150.00 which was due on January 31, 2011. The Notice has an effective date of February 11, 2011. The landlord testifies that the tenant paid \$575.00 towards her rent arrears on February 22, 2011.

The landlord seeks an Order of Possession to take effect as soon as possible. The landlord also seeks an Order to keep the tenants security deposit in satisfaction of the rent arrears and to recover her filing fee.

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. The terms of the tenancy agreement provided by the landlord states that rent is due and payable by the 1st day of each month and it also goes on to say the tenant must pay rent on time to the landlord in advance of, or by the, 1st of each month. S. 46 of the *Act* states: A landlord may end a tenancy if rent is unpaid on any day after the day it was due by giving a notice to end tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The landlord argues that the rent was due on the last day of the month so she was entitled to serve the tenant with a 10 day notice on February 01, 2011. However, the tenancy agreement in place shows that the tenant has until the first of each month to pay the rent. Consequently it is my decision that the 10 Day notice to end tenancy dated February 01, 2011 was served prematurely and is therefore invalid and the tenancy may continue at this time.

The landlords' application to obtain an Order of Possession based on this 10 Day Notice is therefore dismissed. The landlord is at liberty to serve the tenant with a new 10 Day Notice and file another application for an Order of Possession.

With regard to the landlords application to recover unpaid rent and keep the security deposit; s. 26 of the *Act* states a tenant must pay rent on the day it is due under the terms of the tenancy agreement (my interpretation) as the tenant has failed to pay all the rent owed for February, 2011 and the landlord has provided sufficient evidence to support this section of her claim I find the tenant does owe rent of \$575.00 and the landlord is entitled to recover this sum from the tenant.

As the landlord has applied to keep the tenants security deposit in satisfaction of the unpaid rent it is my decision that the landlord is entitled to keep the security deposit of \$575.00.

Conclusion

I hereby Order the landlord to keep the security deposit of **\$575.00** and this amount will be offset against the rent owed to the landlord by the tenant pursuant to s. 38(4)(b) of the *Act*.

As the landlord has been partially successful in this matter, she is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act* and a Monetary Order will accompany this decision for \$50.00. The order must be served on the respondent and is enforceable through the Provincial Court 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: February 24, 2011.

Residential Tenancy Branch