



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement. The landlord also seeks an Order to keep all or part of the security deposit 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*; they were sent to the tenant by registered mail on February 16, 2011. Mail receipt numbers were provided by the landlord in evidence and the Canada Post tracking information shows that this package was refused by the respondent and returned to the landlord. The tenant was deemed to be served the hearing documents on February 21, 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?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The landlord testifies that this month to month tenancy started around September, 2010. Rent for this unit is \$960.00 per month and is due on the first of each month. The tenant paid a security deposit of \$480.00 at the start of the tenancy. The landlord testifies that he had a verbal tenancy agreement with the tenant.

The landlord testifies that the tenant did not paid rent for February, 2011 on the day it was due. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on February 02, 2011. This was given in person to the tenant. This Notice states that the tenant owes rent for February, 2011 of \$960.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on February 12, 2011. The tenant did not pay the outstanding rent or dispute the Notice within five days.

The landlord testifies that the tenant has allowed other occupants to reside at the rental unit without his permission and seeks an Order of Possession to remove the tenant and the unauthorised occupants from the rental unit as soon as possible. The landlord states the tenant did telephone him and say she was leaving the rental unit but he has not had written Notice from her to end her tenancy and she remains responsible for the rental unit.

The landlord testifies that the tenant has caused damage to the rental unit. The landlord has provided photographic evidence which show a window has been broken and the door frame has been damaged by what appears to be a forced entry. The landlord has also provided a photograph of garbage left in the yard by the tenant. The landlord has not yet had these repairs made to the property and has not yet been able to gain access to the unit to determine what if any damages have occurred during the tenancy.

The landlord has applied to retain the tenants' security deposit of \$480 in partial payment towards the rent arrears.

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 when it is due under the tenancy agreement whether or not the landlord has complied with the act (my interpretation). As the tenant has failed to pay rent for February, 2011 I find the landlord is entitled to recover the sum of **\$960.00** pursuant to s. 67 of the *Act*.

The landlord has stated that the tenant may have moved from the rental unit but has not given the correct notice to end her tenancy and the unit still has occupants living there allowed by the tenant. Consequently, when a tenant has not provided proper notice to end a tenancy she remains responsible for the rental unit up to the time the tenancy could legally end.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$480.00** in partial payment of the rent arrears.

With regard to the landlords application for a Monetary Order for damage to the rental unit; the landlord agrees he has not yet had this repair work done as he has not been able to gain access to the rental unit. As such has been unable to determine the actual cost of the repairs. Consequently it is my decision that this section of his application is dismissed with leave to reapply.

As the landlord has been partially 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 landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for February, 2011	\$960.00
Subtotal	\$480.00
Plus filing fee	\$50.00
Total amount due to the landlords	\$530.00

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.

Conclusion

I HEREBY FIND in partial favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$530.00**. 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 landlord 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: February 24, 2011.

Residential Tenancy Branch