



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, OPC, MND, MNR, MNSD, FF

Introduction

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

Service of the hearing documents was done in accordance with section 89 of the *Act*, They were sent to the tenant by registered mail on March 16, 2011.

Both parties appeared, gave their testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the evidence presented at the hearing, a decision has been reached:

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to an Order of Possession for cause?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

Both parties agree that the tenancy started on December 01, 2006. This is a month to month tenancy and rent is now \$415.13 per month and is due on the first of each month. The tenant paid a security deposit of \$162.50 on December 01, 2006.

The landlords' agent testifies that the tenant was served with a One Month Notice to End tenancy on December 28, 2010 which was effective on January 31, 2011 due to cause. The landlords' agent testifies that the tenant is an alcoholic and has endangered the building and other tenants because he drinks heavily, smokes inside his unit and has caused a pan to catch on fire in his unit; at which time the fire service and ambulance were called to the building. The landlords' agent testifies the tenant asked for and was given an extension on this Notice to give him more time to move out however he failed to move out at that time.

The landlords' agent testifies that the tenant did not pay rent when it was due on February 01, and March 01, 2011. On March 06, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent by posting this notice to his door. The amount owing at this time was \$830.26. Since that time the tenant has not paid rent for April, 2011 and the landlord seeks to amend his application to include rent for April of \$415.13. This brings the total amount of the landlords claim for unpaid rent to \$1,245.39. The landlord seeks an Order of Possession effective on April 15, 2011.

The landlords' agent testifies that the tenants unit is in a dirty condition and they will incur costs of \$300.00 to have it cleaned. This work has not yet been carried out and other costs may be incurred after the tenancy has ended.

The landlord seeks to keep the tenants security deposit to offset against the unpaid rent and to recover their \$50.00 filing fee paid for this application.

The tenant does not dispute that he owes rent for February, March and April, 2011. The tenant states he does not have any money to pay his rent.

Analysis

There is no dispute about the amount of outstanding rent by the tenant. Consequently, I find the landlord is entitled to recover rent arrears for February and March, 2011. I further find the landlord may amend his application to include unpaid rent for April, 2011 as the tenant continues to reside at the rental unit and would be aware that rent was due for April, 2011. Therefore I find the landlord has established their amended claim for unpaid rent of **\$1,245.39** and will receive a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the landlords claim for damages to the rental unit; at this time the landlord agrees that cleaning of the unit has not been carried out and I find as the tenant still resides at the rental unit this section of the landlords claim is premature and is therefore dismissed with leave to reapply.

I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit of **\$162.50** and accrued interest of **\$4.98** in partial payment of the rent arrears.

As the landlord has been partially successful in this matter I find they may recover the **\$50.00** filing fee paid for this application from the tenant pursuant to s.72(1) of the *Act*. The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for three months	\$1,245.39
Less security deposit and accrued interest	(-\$167.48)
Total amount due to the landlord	\$1,127.91

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to s. 88 of the *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 s. 46(5) of the *Act*, to have accepted that the tenancy ended on the date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

With regard to the landlords' application for an Order of Possession based on the One Months Notice to End Tenancy for cause; as an Order of Possession has been issued for unpaid rent there is no requirement or need to issue the landlord with two separate Orders for Possession. Therefore no Order has been issued concerning the One Month Notice.

Conclusion

I HEREBY FIND in partial favor of the landlords' amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,127.91**. The order must be served on the tenant 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 on **April 15, 2011 at 1.00 p.m.** This order must be served on the tenant 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: April 05, 2011.

Residential Tenancy Branch