



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and utilities, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord, was done by registered mail on May 26, 2011. Canada Post receipts were provided in the Landlord's evidence. The Tenant confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary order as a result of that breach?

Background and Evidence

The Tenant testified that she entered into a written month to month tenancy agreement that began on September 1, 2004. Rent is payable on the first of each month in the amount of \$900.00 and before September 1, 2004 the Tenant paid \$400.00 as the security deposit.

The Landlord testified that he confirmed with the terms of the tenancy agreement as stated by the Tenant. He advised that the Tenant had been short on her rent and as of May 15, 2011 she owed \$1,800.00 for rent. There was also an outstanding balance for

utilities. The Landlord was not able to provide testimony of when charges were applied to the Tenant's account or when payments were made. When I asked if any payments had been made since the issuance of the 10 Day Notice he answered no.

The Tenant advised that the 10 Day Notice was served to her twelve year old daughter on Sunday May 15, 2011, at a time when the Tenant was not at home. She said she found the Notice under a pile of papers on Wednesday May 18, 2011 which is the same day the Landlord came to try and collect the rent. The Tenant confirmed she owed money for rent but could not provide testimony of how much was owed or when it was accumulated. She did state that she made a payment of \$500.00 on June 7th or 8th, 2011.

The Landlord rustled some papers around and stated that he did receive a payment of \$500.00 on June 8, 2011. I asked the Landlord how he kept his accounting records to which he responded that he does not have records he just has receipts that are issued when he receives payments. He stated that he wanted an Order of possession effective June 30, 2011.

Analysis

I have carefully considered the aforementioned and the documentary evidence which consisted of an outdated 10 Day Notice to End Tenancy for unpaid rent.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant Landlord pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenant.

Order of Possession. The evidence supports the Tenant received the 10 Day Notice on May 18, 2011 and that she has not paid her rent in full within the 5 day time limit pursuant to section 46(1) of the *Act*. Therefore 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 to which the notice relates pursuant to section 46(5) of the *Act*. As per the aforementioned I approve the Landlord's request for an Order of Possession effective June 30, 2011.

Claim for unpaid rent and utilities. The Landlord was not able to provide testimony on when the unpaid rent was accumulated or when payments were received by the Tenant. Therefore, in the absence of copies of receipts or a tenant ledger, I am not able to ascertain what amounts remain outstanding. Furthermore there is no evidence before me to prove the actual amount of utilities that were charged or when payments were made. Based on the Tenant's testimony that there is rent outstanding I dismiss the Landlord's application for monetary compensation with leave to reapply.

The Landlord has not been successful with his full claim; therefore I decline to award recovery of the \$50.00 filing fee.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **June 30, 2011, at 1:00 p.m. after service on the Tenant**. This order must be served on the Respondent 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: June 17, 2011.

Residential Tenancy Branch