



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, a Monetary Order for unpaid rent 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 were done in accordance with section 89 of the *Act*, and were hand delivered to the tenant on June 21, 2011.

The landlord and an agent for the tenant (her daughter) appeared, gave affirmed 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 solemnly sworn evidence presented at the hearing I have determined:

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 unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started approximately in July 2010. The landlord states this was a verbal agreement between the Parties as the tenant did not sign a tenancy agreement. Rent for this unit is \$500.00 per month and is due on the first day of

each month in advance. The tenant paid a security deposit of \$250.00 on or about July 01, 2010.

The landlord testifies that the tenant owes a balance of rent up to May, 2011 of \$750.00 and failed to pay rent for June, 2011. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on June 07, 2011. This was handed to the tenant in person. This Notice states that the tenant owes rent of \$1,250.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on June 17, 2011. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has not paid rent for July, 2011 to the amount of \$500.00. The landlord has requested to amend the application to include unpaid rent for July, 2011 as the tenant continues to reside in the unit. The landlord claims the total amount of unpaid rent is now \$1,750.00.

The landlord has applied to retain the tenants' security deposit and any accrued interest in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible and to recover his \$50.00 filing fee.

The tenants' agent testifies that her mother does not agree that she owes all this rent and when her mother spoke to the landlords' father he told her she only owed \$750.00. The tenants' agent was unsure when her mother spoke to the landlords' father to determine this. The tenants' agent states that her mother has plans to move from the rental unit as soon as possible.

The landlord testifies that he has no knowledge of a conversation between his father and the tenant concerning her rent payments but in this instance he is willing to forgive the outstanding rent due up to May 01, 2011 and will accept unpaid rent from the tenant for June and July only.

Analysis

With regards to the landlords claim to recover unpaid rent I refer the Parties to Section 26 of the *Act* which states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find from the evidence presented and the testimony before me that the landlord is entitled to recover rent arrears for June, 2011, as per his amended application, to the sum of \$500.00. I also allow the landlord to amend his application to include unpaid rent for July, 2011 as the tenant continues to live in the rental unit and would be aware that rent is due on the first day of each month. Consequently, the landlord is entitled to recover unpaid rent to the total sum of **\$1,000.00** pursuant to s.67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$250.00 in partial payment of the rent arrears.

As the landlord has been 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 | \$1,000.00 |
| Less Security Deposit and accrued interest | (-\$250.00) |
| Plus filing fee | \$50.00 |
| Total amount due to the landlords | \$800.00 |

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 pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$800.00**. 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 landlords 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: July 14, 2011.

Residential Tenancy Branch