



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution by the Landlord seeking an Order for Possession and a Monetary Order for unpaid rent. The Landlord originally applied through the direct request process which, upon review, was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*. The Landlord amended the application on August 9, 2011 to include a request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the conference call hearing documents was done via registered mail on August 8, 2011, Canada Post Receipt # XXXXXXXXXX and the amended application was completed via registered mail on August 10, 2011, Canada Post Receipt # XXXXXXXX

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing and in documentary form. The Tenant did not attend the hearing despite being served the hearing documents in accordance with the Act.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. Is 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 parties entered into a month to month tenancy agreement that began on November 1, 2009. Rent is payable on the last day of each month in the amount of \$1,017.00 and on October 4, 2009 he Tenant paid \$497.00 as the security deposit.

The Landlord testified that when the Tenant failed to pay her June 30, 2011 rent a 10 Day Notice to End Tenancy was posted to her door on July 1, 2011. Rent is currently outstanding for July and August 2011 and the Tenant is still occupying the unit. The Landlord is seeking the Order of Possession and a Monetary Order for unpaid rent for both months.

Analysis

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 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. I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenant failed to pay the rent within 5 days after receiving this notice, and that 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*. Therefore I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent. The Landlord claims for 2 months of unpaid rent of \$2,034.00 (2 x \$1,017.00) that was due June 30, 2011 and July 31, 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the last day of each month. As per the aforementioned I find the Landlord has met the burden of proof and I approve her request for a Monetary Order for **\$2,034.00.**

The Landlord has succeeded with her claim; therefore I award recovery of the **\$50.00** filing fee.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Respondent Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$2,084.00** (\$2,034.00 + \$50.00). This Order is legally binding and must be served upon the Respondent Tenant.

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: August 26, 2011.

Residential Tenancy Branch