



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for breach of an agreement with the landlord; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for unpaid rent; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. She testified that she served the Notice of a Dispute Resolution Hearing to the tenant in person on July 18th, 2011. The tenant did not participate and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

Pursuant to a written agreement, the tenancy started in May 2006. The rent is \$1600.00 per month and the tenant paid a security deposit of \$900.00, which is in excess of the statutory limitation of half the amount of rent by \$100.00.

The landlord testified that the tenant owes rental arrears of \$7100.00 from 2010. In her documentary evidence, the landlord provided copies of receipts for those arrears received from the tenant between October 2010 and April 2011 in \$500.00 instalments totalling \$3500.00, and a cheque of \$2500 for June 2011 which was returned "NSF" from the bank. The landlord stated that the tenant still owes \$3600.00. The landlord also provided a copy of a letter to the tenant from her lawyer dated September 7, 2010, wherein the tenant signed an agreement to compensate the landlord \$500.00 each month until the rental arrears of \$7100.00 was paid in full.

In addition, the landlord stated that the tenant owes rent in 2011 as follows:

- March 2011: \$ 400.00
- June 2011: \$1600.00
- July 2011: \$1600.00
- August 2011: \$1600.00
- Sub-total: \$5200.00

Analysis

I accept the landlord's undisputed testimony that she served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

The landlord in this matter is exercising her right to end tenancy under Section 46(1) of the Act. That section states in part that a landlord may end a tenancy if rent is unpaid on any day after the day it is due by giving notice to end tenancy, and that a notice under this section must comply with section 52. The landlord did not serve notice to the tenant as required by statute and therefore I have no legal basis on which to grant the landlord an order of possession.

Concerning the unpaid rent; on the landlord's undisputed testimony I accept that rent was not paid in the sum of \$5200.00 and the landlord is entitled to recover that loss of income.

Conclusion

The landlord's application for an order of possession is dismissed with leave to reapply and the tenancy will continue. The landlord is at liberty to also apply for a monetary order concerning the rent in arrears for \$3600.00.

The landlord established a claim of \$5200.00. Since she was successful, she is entitled to recover the \$100.00 filing fee and pursuant to Section 67 of the Act, I grant the landlord a monetary order for the sum \$5300.00. This Order may be registered in the Small Claims 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: August 22, 2011.

Residential Tenancy Branch