



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MNSD, OPR

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for an Order of Possession based on the Notice to End Tenancy for non-payment of rent, a request for an order for the outstanding rent, and a request for recovery of the filing fee. The applicant is also requesting an order to keep the full security deposit towards the claim.

Background and Evidence

The applicant testified that:

- The tenant failed to pay the July 2011 rent and therefore on July 6, 2011 the tenant was personally served with a Notice to End Tenancy for non-payment of rent.

- The tenant has not complied with the Notice to End Tenancy and has not paid any further rent, and therefore at this time there is rent outstanding for the months of July 2011 and August 2011.

The applicant is therefore requesting an Order of Possession for as soon as possible and a monetary order as follows:

July 2011 rent outstanding	\$1000.00
August 2011 rent outstanding	\$1000.00
Filing fee	\$50.00
Total	\$2050.00

The applicant further requests an order allowing him to keep the full security deposit towards the claim and requests a monetary order be issued for the difference.

The respondent testified that:

- He did not pay the July 2011 rent because of issues he is having with the landlord and the rental property.
- He did receive the Notice to End Tenancy for non-payment of rent and has not filed a dispute of that notice.
- He has also withheld the August 2011 rent.
- He believes he has the right to withhold the rent because of deficiencies in the rental unit and a breach of his right to quiet enjoyment.
- He has not applied for dispute resolution to get a monetary order against the landlord.

Analysis

The tenant does not have the right to unilaterally withhold the rent and if he does so the landlord does have the right to give a 10 day Notice to End Tenancy for non-payment of rent.

If the tenant receives a 10 day notice for non-payment of rent the tenant has five days in which to file a dispute of that notice and if he fails to do so he is conclusively deemed to have accepted the end of the tenancy, therefore in this case, since the tenant has filed no dispute of the notice, this tenancy will end pursuant to that notice.

Further since the tenant has never applied for a monetary order against the landlord, he did not have the right to withhold the rent and therefore I also allow the landlords claim for the \$2000.00 outstanding rent.

I also order recovery of the \$50.00 filing fee.

Conclusion

I have issued an Order of Possession to the landlord that is enforceable two days after service of the order on the tenants.

It is my finding that the landlord has established a monetary claim in the amount of \$2050.00, and therefore I order that the landlord may retain the full security deposit of \$500.00, and I have issued a monetary order against the tenants in the amount of \$1550.00.

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 12, 2011.

Residential Tenancy Branch