



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep all or part of the pet and or security deposit, 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.

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.

Issue(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

I heard undisputed testimony that the parties entered into a month to month tenancy agreement that began February 28, 1995 for occupancy in a seniors low income rental unit. Rent is payable on the first of each month in the amount of \$418.00 and on January 9, 1995 the Tenant paid \$125.00 as the security deposit.

The Landlord affirmed that rent is paid by electronic transfer and when July 1, 2011 was not paid due to non sufficient funds a 10 Day Notice was sent to the Tenant registered mail on August 9, 2011. Payments towards the July 2011 rent were received with receipts issued for use and occupancy only as follows: August 17, 2011 \$150.00; August 19, 2011 \$50.00; and September 7, 2011 for \$218.00 plus the \$25.00 NSF fee.

The Landlord advised that she was still seeking an Order of Possession effective September 30, 2011 as there has been a pattern of late payment of rent. In 2011 alone rent was late July 1st, March 24th, and February 7th. She is withdrawing her request for a monetary order and wishes to proceed with being reimbursed the filing fee.

The Landlord added that she has never seen the Tenant at this rental unit and questioned if the Tenant's son, who is too young to enter into a tenancy, was the only occupant.

The Tenant's son affirmed that the rental unit was a one bedroom unit and that he moved into the unit without being added to the tenancy agreement. He confirmed he was in his late forties and not old enough to qualify to rent a unit in this seniors complex. He contends that his mother resides at the unit with him and he sleeps on the couch.

The Tenant affirmed that rent had not been paid on time in July 2011 and stated that her son required medications so that is why the payment was NSF. She stated that she resided at the rental unit with her son. When asked what the address of the rental unit was the Tenant stated the street address however did not know the postal code.

Analysis

Where a tenant is served a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to Section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

In this case the Notice was sent via registered mail to the Tenant on August 9, 2011. Accordingly I find the Tenant is deemed to have received the Notice on August 14, 2011, five days after it was mailed and the effective date of the Notice is August 24, 2011, pursuant to Section 90 of the Act. Since the Tenant did not pay the full outstanding rent within five days I find the tenancy ended on August 24, 2011.

The Tenant later paid the July rent in payments August 17, 19, and September 7, 2011 and the September 1, 2011 rent which granted her use and occupancy of the rental unit until September 30, 2011. Accordingly I grant the Landlord an Order of Possession effective September 30, 2011.

The Landlord has been successful with her application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

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

The Landlord may withhold the one time filing fee award of **\$50.00** from the Tenant's security deposit.

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: September 20, 2011.

Residential Tenancy Branch