



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNSD MNR 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, to keep all or part of the pet and or security deposit and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on August 25, 2011. Mail receipt numbers were provided in the Landlord's evidence along with a copy of the Canada Post tracking document which indicates the Tenant signed for receipt of the package on August 29, 2011. Based on the evidence provided by the Landlord I find the Tenant has been sufficiently served the hearing documents in accordance with section 89 of the *Act*.

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. 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 Landlord affirmed that she did not serve the Tenant with copies of their 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 August 1, 2011 rent a 10 Day Notice to End Tenancy was posted to her door on August 10, 2011. The Tenant has an accumulated unpaid balance due of \$1,148.00 which includes a balance from August and September 2011 rents and late payment fees of \$25.00. The tenancy agreement under section #10 provides for a late payment charge of \$25.00.

The Tenant affirmed she received the hearing documents and the 10 Day Notice to End Tenancy for unpaid rent. She stated that she had made payments towards her rent and erred in her thinking that she had ten days to make the payments. She confirmed rent remains unpaid for August and September 2011 as claimed by the Landlord because she was awaiting payment from employment insurance and the outcome of this hearing. She confirmed that although she has the funds to pay her September 2011 rent she does not have enough to pay the October 1st rent which is due on Saturday.

The Landlord is seeking the Order of Possession and a Monetary Order for the accumulated balance of owing.

Analysis

The Landlord did not provide copies of her evidence in accordance with section 3.5(a) of the *Residential Tenancy Branch Rules of Procedure* which provides that all evidence must be received by the *Residential Tenancy Branch* and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the Definitions part of the *Rules of Procedure*.

Considering evidence that has not been received by the *Residential Tenancy Branch* or served on the other party in accordance with the *Residential Tenancy Branch Rules of Procedure* would create prejudice to the other party who would be limited to compiling a response. Therefore as the applicant Landlord has not served their evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* I find that pursuant to section 11.5 of the *Residential Tenancy Branch Rules of Procedure*, the Landlord's evidence will not be considered in my decision. I did however consider the Landlord's testimony.

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 accumulated unpaid rent from August and September 2011 of \$1,148.00, 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 **\$1,148.00**.

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

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Accumulated unpaid Rent	\$1,148.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,198.00
LESS: Security Deposit \$525.00 + Interest 0.00	<u>-525.00</u>
Offset amount due to the Landlord	<u>\$ 673.00</u>

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 **\$673.00**. 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: September 28, 2011.

Residential Tenancy Branch