



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, 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, acknowledged receipt of evidence submitted by the other, 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 and/or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a monetary Order and Order of possession pursuant to sections 67 and 55 of the *Residential Tenancy Act*?

Background and Evidence

I heard undisputed testimony that the parties entered into a verbal month to month tenancy agreement that began on September 1, 2010. Rent is payable on the first of each month in the amount of \$1,250.00. The Tenant paid a security deposit of \$625.00 on September 1, 2010 which was put towards the payment of June 1, 2011 rent. No deposits are currently held by the Landlord.

Both parties affirmed that when the Tenant failed to pay September 1, 2011 rent a 10 Day Notice to End Tenancy was posted to the Tenant's door on September 15, 2011 and no rent has been paid for September or October 2011.

The Tenant stated that as of this morning he had vacated the property and cleaned the rental unit. He did not have a forwarding address to provide during the hearing. The Landlord is seeking an immediate Order of Possession in addition to the monetary order.

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 \$2,500.00 (2 x \$1,250.00) that was due September 1, 2011 and October 1, 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 his request for a Monetary Order for **\$2,500.00**.

The Landlord has succeeded with his claim; 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 **October 31, 2011, at 1:00 p.m. 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 **\$2,550.00** (\$2,500.00 + \$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: October 31, 2011.

Residential Tenancy Branch