



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of possession, a monetary Order for unpaid rent, and recovery of the filing fee.

The Landlord provided affirmed testimony that he personally served the Tenants the 10 Day Notice to End Tenancy for Unpaid Rent on the evening of September 17, 2011, by handing the Notice in person to Tenant, MM. The Landlord testified that he personally served Tenant, MM, with the Application for Dispute Resolution and Notice of Hearing on the day of September 29, 2011, but that he was unable to serve the other Tenant, ZH, who was away at work.

The Tenants did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter (s):

I accept the Landlord's evidence that the Tenants were properly served with the 10 Day Notice to End Tenancy for Unpaid Rent in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline. An Application for an Order of possession need only be served on one Tenant, according to the Service Provisions of the Policy Guideline; as a result I can proceed to consider an Order of possession of the rental unit.

I accept the Landlord's evidence that Tenant MM was properly served with the Application and Notice of Hearing. However, the service provisions with regard to an Application for a monetary Order require each of the Tenants to be served, pursuant to the Act, Policy Guideline, and Rules of Procedure. I find that because only one of the Tenants was properly served with the Application and Notice of Hearing, I can only proceed to consider a monetary order against Tenant, MM, who was properly served.

At the Hearing I notified the Landlord that I could only consider a monetary order against Tenant MM, and he indicated that he understood and wished to proceed with the Hearing.

As a result, I dismiss the Landlord's request for a monetary Order against the other Tenant, ZH.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of possession and a monetary Order for unpaid rent and/or recovery of the filing fee?

Background and Evidence

Based on the testimony of the Landlord the 10 Day Notice to End Tenancy for Unpaid Rent was served in person on Tenant MM on September 17, 2011. This Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. This Notice also explains the Tenants had five days to dispute the Notice. This Notice advised the Tenants that they must vacate the rental unit on September 27, 2011. The Landlord testified that the Tenants have not yet moved out and that they have not paid the outstanding rent and now they owe rent for October 2011 as they are still in the rental unit.

The Landlord testified that the tenancy commenced on August 01, 2010 under a verbal tenancy agreement with a monthly rent of \$900.00, due on the first of each month. The Landlord stated that the Tenants have had financial difficulties since November 2010 and been in arrears with the rent for several months, only paying him partial amounts when they could. The Landlord stated that he was sympathetic with the Tenants' situation which is why it has taken him so long to decide to issue a Notice to End Tenancy. The Landlord testified that as of September 01, 2011 that the Tenants owed \$3897.50 in rent, as stated on the 10 Day Notice and on the Application for Dispute Resolution.

At the hearing the Landlord requested that the rent for October (\$900.00) be added to his Application as the Tenants are still in the rental unit and October 01, 2011 is past. The Landlord is seeking a total amount outstanding of \$4797.50 in unpaid rent.

The Landlord has also applied for reimbursement of his \$50.00 filing fee for this proceeding.

Analysis

Based on affirmed testimony and evidence of the Landlord, and in the absence of any evidence or Application from the Tenants, and on a balance of probabilities I find as follows:

I have reviewed all documentary evidence and considered the Landlord's testimony and I accept the evidence and testimony that the Tenants have failed to pay the rent owed within the 5 days granted under section 46 (4) of the *Act*, and that they are still in the rental unit as of the date of this hearing.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on September 27, 2011, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an Order of possession.

I find that the Tenants are aware that they are also in arrears for the rent for October and that they are aware that the rent was due on October 1, 2011. As a result, pursuant to section 64(3) of the Act, I grant the Landlord's request that I amend his Application to add the \$900.00 rent due for October.

I find that the Landlord has established a total monetary claim of \$4797.50, comprised of unpaid rent outstanding to September 01, 2011 in the amount of \$3897.50 and \$900.00 unpaid rent for October 2011. As stated in the preliminary matters, I have found that the Landlord is only entitled to a monetary Order against the Tenant (MM) who was properly served with the Application and Notice of Hearing.

As the Landlord has succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary Order against Tenant MM, bringing the total amount owing to \$4847.50.

I find that the Landlord is entitled to a monetary Order under section 67 against Tenant MM for the amount of **\$4,847.50**.

Conclusion

I find that the Landlord is entitled to an Order of possession effective **two days after service** on the Tenants and this Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord is entitled to monetary Order pursuant to section 67 against Tenant MM in the amount of **\$4847.50** comprised of rent owed and the filing fee. I dismiss the Landlord's request for a monetary Order against the other Tenant, ZH.

The Orders accompany the Landlord's copy of this decision. The Orders must be served on the Tenants and may be filed in the Provincial Court (Small Claims) 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: October 21, 2011.

Residential Tenancy Branch