



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

The Landlord testified that she served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on September 29, 2011, and provided the receipt and tracking slip from Canada Post as evidence. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenant 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)

The Landlord made an oral request at the hearing to amend the Application to include unpaid rent for October (\$850.00), and compensation for loss for late payment of rent in the form of late fees (\$25.00 x 2 months).

The tenancy agreement between the parties indicates that fees of \$25 can be charged by the Landlord for late payment of rent; however, the Landlord did not specifically request compensation for this loss on their Application and provide a detailed calculation of the amounts. I find that the Tenant has not been properly notified of the Landlord's request for compensation for loss for late payment of rent. As a result I deny the Landlord's request to amend the Application for compensation for loss for late payment of rent (late fees).

Pursuant to section 64(3) of the Act I am granting the Landlord's request to amend the Application to include the unpaid rent for October as it is reasonable to do so. The Tenant is aware that rent for October is due, and he has remained in the rental unit.

Issue(s) to be Decided

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

Background and Evidence

The Landlord provided affirmed testimony that she served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the Tenant's door on September 08, 2011.

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy commenced on August 01, 2011, and rent is due on the first day of the month in the amount of \$850.00. The Tenant paid the Landlord a security deposit of \$425.00. The Landlord testified that the Tenant had agreed to make direct deposits from his bank account to the Landlord bank account for the first of each month. The Landlord states that the Tenant's bank account did not have sufficient funds to make the transfer for September's rent.

Based on the testimony of the Landlord, the 10 Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on September 08, 2011. This Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. This Notice also explains the Tenant had five days to dispute the Notice. This Notice advised the Tenant that he must vacate the rental unit on September 21, 2011. The Landlord testified that the Tenant contacted her to confirm that he received the Notice, but explained that he was waiting for some income from a contract and at the time had no money to pay the rent. Rent was not paid within five days and the Tenant did not file an Application to dispute the Notice.

The Landlord filed an Application for Dispute Resolution on September 28, 2011. The Tenant came to the Landlord's office on September 29, 2011 and paid \$850.00 rent owing for September. Despite the Tenant making rent payment, the Landlord decided to continue with their Application for Dispute Resolution, and at 3:45 P.M. on the afternoon of September 29, 2011 the Landlord sent the Tenant the Application, evidence, and Notice of Hearing package by Registered Mail.

The Landlord testified that the Tenant has not moved out of the rental unit, and now he owes \$850.00 rent for October 2011. The Landlord requests an Order for the \$850.00 outstanding rent for October 2011, as well as an Order of possession of the rental unit. The Landlord has applied to keep all or part of the security deposit towards the unpaid rent.

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

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's evidence that the Tenant was 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.

I have reviewed all documentary evidence and considered the Landlord's testimony and I accept the evidence and testimony that the Tenant has failed to pay the rent owed within the 5 days pursuant to section 46 (4) of the Act, and that he is still in the rental unit as of the date of this hearing.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on September 21, 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 Tenant is aware that he is in arrears for the rent for October and that he is aware that the rent was due on October 01, 2011. As a result, I find that the Landlord has established a total monetary claim of \$850.00, comprised of the unpaid rent for October 2011.

As the Landlord has succeeded in their 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 the Tenant bringing the total amount owing to \$900.00.

I Order that the Landlord retain the security deposit (\$425.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$475.00.**

Conclusion

I find that the Landlord is entitled to an Order of possession effective **two days after service** on the Tenant.

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary Order for the balance due in the amount of **\$475.00.**

The Orders accompany the Landlord's copy of this decision. The Orders must be served on the Tenant and may be filed in the Supreme 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 25, 2011.

Residential Tenancy Branch