



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, OPR, 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 provided affirmed testimony that she served the Tenant by registered mail with the Application for Dispute Resolution and Notice of Hearing on October 01, 2011, and provided the tracking receipt and the tracking status printout from Canada Post as evidence. I find the Tenant has been duly served under 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.

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 testified 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 02, 2011. A copy of the 10 Day Notice to End Tenancy was submitted in the evidence by the Landlord. 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 they must vacate the rental unit on September 12, 2011.

The Landlord testified that they had no response from the Tenant who was still in rental unit at the time of this hearing.

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy agreement states that the tenancy commenced on May 01, 2010, and that rent is due on the first of the month in the amount of \$1,020.00. The Landlord has a security deposit of \$510.00 as part of the tenancy agreement. The

Landlord states that the Tenant only paid \$520.00 on September 01, 2011. The Landlord testified that the tenant owes \$523.46. The Landlord testified that \$500.00 is the balance of the rent owed amount for September 2011, however she was uncertain whether the \$23.46 is for parking or a rent increase; she stated that she thinks it is most likely for a rent increase. The Landlord confirmed that the package of evidence submitted for this hearing contained no evidence of any parking fees agreed to by the Tenant or any rent increase administered upon the Tenant.

The Landlord testified that the Tenant has not moved out of the rental unit, and owes \$500.00 rent for September 2011, plus the rent increase of \$23.46, and now owes \$1,020.00 rent plus the rent increase of \$23.46 for October 2011. The Landlord requests the outstanding amounts owed to them from the Tenant as well as an Order of possession of the rental unit.

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 accept the Landlord's evidence that the Tenant was properly served with the Application and Notice of Hearing.

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 the Tenant 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. As the Notice was posted on the door of the rental unit on September 02, 2011, it is deemed to have been served 3 days later, therefore the Tenant had 5 days to pay the rent or 10 days from September 05, 2011 to vacate the rental unit. As a result, the Notice effective date for move out corrects to September 15, 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 they are in arrears for the rent for October and that they are aware that the rent was due on October 01, 2011. As a result, pursuant to section 64(3) of the Act, I grant the Landlord's request that I amend the Application to add the \$1,020.00 loss of revenue for the unpaid rent for October.

I find that the Landlord has established a total monetary claim of \$1,520.00, comprised of \$500.00 outstanding rent for September 2011, and \$1,020.00 loss of revenue for the unpaid rent for October 2011.

The Landlord has not provided evidence to support that a Notice of Rent Increase was properly served on the Tenant. As a result the Landlord is not entitled to the \$46.92 (\$23.46 x 2 months) rent increase claimed for September and October 2011.

As the Landlord 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 \$1,570.00.

I Order that the Landlord retain the security deposit (\$510.00), in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$1,060.00**.

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 **\$1,060.00**.

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 28, 2011.

Residential Tenancy Branch