



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 by the Landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent, and the filing fee. The landlord also applied to retain the security deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order to recover unpaid rent, the filing fee and to retain the security deposit?

Background and Evidence

The tenancy started in February, 2009. The monthly rent is \$800.00 due in advance on the last day of each month. Prior to moving in the tenant paid a security deposit of \$350.00. Neither party filed a copy of the tenancy agreement.

The landlord stated that the tenant fell behind on rent and on August 30, 2011, the landlord served the tenant with a ten day notice to end tenancy. The tenant made some payments after receiving the notice to end tenancy. The landlord stated that at the time of the hearing, the tenant owed unpaid rent in the amounts of \$520.00 for June 2010, \$500.00 for August 2011, \$400.00 for September 2011 and \$800.00 for October 2011. The landlord also claimed \$75.00 for late fees. The landlord is applying for an order of possession effective two days after service on the tenant and a monetary order in the amount of \$2,295.00 for unpaid rent plus \$50.00 for the filing fee.

Analysis

Based on the sworn testimony of the both parties, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on August 30, 2011 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I also find that the landlord is entitled to \$1,700.00 for unpaid rent for the months of August, September and October 2011. Regarding the unpaid rent from June 2010, the tenant stated that the landlord had forgiven the debt at that time, while the landlord stated that the debt was forgiven on condition that the tenant paid future rents on time. In the absence of any written agreement and the contradictory testimony of both parties, I am unable to determine the terms of the arrangement. In addition, the notice to end tenancy does not include the unpaid rent for June 2010 and therefore I dismiss this portion of the landlord's claim. In the absence of a tenancy agreement, I also dismiss the landlord's application for \$75.00 for late fees. Since the landlord has proven most of her case, she is entitled to the filing fee of \$50.00.

Overall, the landlord has established a claim of \$1,750.00. I order that the landlord retain the security deposit of \$350.00 and accrued interest of \$0.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,400.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order for **\$1,400.00**.

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 05, 2011.

Residential Tenancy Branch