



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – OPR, MNR, MNSD, FF

For the tenant – MT, DRI, CNR, MNR, MNDC, ERP, RP, OPT, RR

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord has applied for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the security deposit and to recover the filing fee from the tenant. The tenant has applied for more time to cancel a Notice to End Tenancy; to dispute an additional rent increase, to cancel the 10 Day Notice to End Tenancy; for the cost of emergency repairs; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for the landlord to make emergency repairs for health or safety reasons; for the landlord to make repairs to the unit, site or property; for an Order of Possession of the rental unit; to allow the tenant to reduce his rent for repairs, services or facilities agreed upon but not provided.

The landlord's agents and the tenant attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords' agents and tenant both provided evidence to the Residential Tenancy Branch and to each other in advance of the hearing and the landlord was permitted to provide additional evidence by fax to the Dispute Resolution Officer during the hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the Dispute Resolution officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find I will deal with the tenants’ application for more time to cancel the Notice to End Tenancy and his application to cancel the Notice to End Tenancy. As the remaining issues are unrelated to the main Issue to cancel the Notice, I will not deal with them at the hearing today.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep all or part of the tenants’ security deposit in full or partial satisfaction of the claim?

Background and Evidence

Both parties agree that this month to month tenancy started on June 01, 2010. Rent for this unit was agreed at \$450.00 per month which increased to \$460.00 per month on August 01, 2011. Rent is due on the first day of each month in advance according to the terms of the tenancy agreement. The tenant paid a security deposit of \$220.00 on June 01, 2011.

The landlord testifies that the tenant failed to pay rent for September, 2011 and a 10 Day Notice was served upon the tenant on September 05, 2011 by posting it to the tenants’ door. A copy of this Notice and proof of service of the Notice was provided during the hearing, but the landlord has neglected to put in an effective date of the Notice; on this Notice the landlord claims rent for September, 2011 of \$460.00. The landlord testifies the tenant came to the office two days later and asked for another copy of the Notice which was given to him and discussions took place between the property manager and the tenant concerning repairs.

The landlords' agent testifies that since that time the tenant failed to pay the rent owed and failed to pay rent for October, 2011. The total amount of outstanding rent is now \$920.00. The landlord seeks an Order to keep the tenants security deposit of \$220.00 in partial satisfaction of their monetary claim.

The landlord also seeks an Order of Possession to take effect as soon as possible and seeks to recover their \$50.00 filing fee.

The tenant has applied for more time to cancel the Notice to End Tenancy. The tenant testifies he was staying elsewhere and did not get the 10 Day Notice until he went back to his unit on October 03, 2011. He states he then filed an application to cancel the Notice. The tenant states he received this Notice in the landlords' package left under his door with documentation for this hearing. The tenant does not dispute that he owes rent for September and October, 2011 but states as the landlord failed to make repairs to his unit the rent was withheld by the tenant.

The landlord disputes the tenants claim. The landlord testifies the 10 day Notice was put on the tenants door as declared and state if the tenant was staying elsewhere he should have notified the landlord. The landlord states the tenant attempted to avoid service of the hearing documents so they were slid under his door and also sent by registered mail. The landlords' agent testifies the tenant was at his rental unit during the time the Notice was posted to his door as he refused entry to the landlords' agent to make repairs

Analysis

Based on the evidence presented and the sworn testimony of all parties I find that s. 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find there is no dispute that the tenant owes rent for September and October, 2011 of **\$920.00**. Therefore, I find the landlord is entitled to a monetary award for this amount pursuant to s.67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$220.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, they are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$920.00
Plus filing fee	\$50.00
Total amount due to the landlords	\$750.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days.

The tenant has applied for more time to file an application to cancel this 10 Day Notice, however the tenant relied on his testimony that he did not receive the 10 Day Notice until October 03, 2011 because he was staying elsewhere. As a Notice is deemed to be served within three days when it is posted to the tenants' door I consider that service did take place as testified by the landlord. The landlord has provided proof of service and the tenant has provided no evidence to support his claim that he was staying elsewhere. The tenant has not given any exceptional reasons he should be entitled to more time to file his application pursuant to s. 66(1) of the *Act* and his application for more time is dismissed without leave to reapply.

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 the effective date of the Notice and grant the landlord an Order of Possession pursuant to s.55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$750.00**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The tenants application for more time to cancel the Notice and to cancel the 10 Day Notice to End Tenancy dated September 05, 2011 are dismissed without leave to reapply.

As the tenancy is ending the tenant is at liberty to reapply for the part of his application concerning money owed or compensation for damage or loss.

The remainder of the tenants claim not heard at the hearing today under s. 2.3 of the Rules of Procedure are dismissed without leave to reapply.

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 20, 2011.

Residential Tenancy Branch