



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession for unpaid rent; an Order of Possession because the tenant has breached an agreement with the landlord; a Monetary Order for unpaid rent; and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 29, 2011. Mail receipt numbers were provided by the landlord. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and his agent appeared, gave affirmed testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to an Order of Possession because the tenant has breached an agreement with the landlord?
- Is the landlord entitled to a monetary Order to recover unpaid rent?

Background and Evidence

This tenancy started on September 01, 2011. This is a fixed term tenancy which is due to expire on August 31, 2012. Rent for this unit is \$625.00 per month. Rent is due on the first of each month. The tenant paid a security deposit of \$315.00 on September 01, 2011.

The landlord testifies that the tenant owes a balance of rent for September, 2011 of \$242.80. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent on September 15, 2011. This was posted to the tenant's door and was deemed to have been served three days after posting. This Notice states that the tenant owes rent of \$242.80 due on September 01, 2011. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on September 24, 2011. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has also failed to pay rent for October, 2011. The total amount of outstanding rent is now \$867.80.

During the hearing the landlords' agent requested an amendment to the landlords' application; to be permitted to keep the tenants security deposit in partial satisfaction of the unpaid rent.

The landlords have also applied for an Order of Possession to take effect as soon as possible and seek to recover their \$50.00 filing fee.

The landlord states the tenant has also breached an agreement with the landlord as the tenant has been smoking in his unit and has left personal items outside his unit.

Analysis

Section 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 the landlords have established their claim to recover unpaid rent for September and October, 2011 and will receive a Monetary Order to the sum of **\$867.80** pursuant to s.67 of the *Act*.

The landlord's agent has verbally requested to retain the security deposit during the hearing. I must deny this request as the landlord has not applied to keep the security deposit on their application. A tenant is entitled to know what the landlord has applied for when they are served with the application. The landlords are at liberty to file a new application to keep the security deposit.

As the landlords have 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 landlords will receive a monetary order for the balance owing as follows:

Outstanding rent	\$867.80
Plus filing fee	\$50.00
Total amount due to the landlords	\$917.80

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 tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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.

As an Order of Possession has been granted due to unpaid rent no further Order is required for the portion of the landlords claim that the tenant has breached an agreement with the landlord.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$917.80**. 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.

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 26, 2011.

Residential Tenancy Branch