



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF, O (OPB)

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an for a Monetary Order for unpaid rent; for other issues concerning an Order of Possession due to a Notice to end tenancy given by the tenant; and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, gave sworn testimony and was given the opportunity to provide documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony has been reviewed and are considered in this decision.

The tenant failed to dial into the conference call. Ten minutes was allowed at the start of the hearing for the tenant to dial into the call. The tenant dialed into the conference call just as the matter was concluded therefore no testimony was taken from the tenant.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to an Order of Possession due to the Notice to End tenancy given by the tenant?

Background and Evidence

This month to month tenancy started on December 10, 2010. The tenant rents a room in the basement suite of this house and has shared laundry, kitchen and bathroom facilities with the other tenants. Rent is \$500.00 per month due on the 1st of each month.

The landlord testifies that the tenant did not pay rent for August, September and October, 2011 and owes the sum of \$1,500.00. The landlord testifies the tenant was given rent from social services for August, 2011 but failed to use this money to pay his rent. The landlord seeks a Monetary Order to recover the unpaid rent.

The landlord testifies that the tenant verbally told him he was moving out of his rental unit at the beginning of September, 2011. The landlord states the tenant later changed his mind after the landlord had found a new tenant to take over this room. The tenant then gave the landlord written Notice to end the tenancy for October 01, 2011. The landlord testifies the tenant still refuses to move out and his room has been rented to a student who has to sleep on the landlords couch because the tenant has refused to move out of his room.

The landlord seeks an Order of Possession due to the tenants written Notice to end the tenancy dated August 28, 2011 with an effective date of October 01, 2011.

The landlord seeks to recover the \$50.00 filing fee paid for this application.

The landlord provided the following documentary evidence: the tenant's written notice to end tenancy and e-mails concerning the unpaid rent. The tenant also provided some documentary evidence which has not been considered as the tenant failed to serve this evidence to the landlord.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims until after the hearing had concluded; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

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.*

It is my decision that the tenant failed to pay the full rent owed for August, September and October, 2011. The landlord has therefore established their claim for unpaid rent and will receive a Monetary Order for the sum of **\$1,500.00** pursuant to s. 67 of the *Act*.

I further find the tenant did give written Notice to end the tenancy on August 28, 2011 and failed to move from the rental unit by the effective date of this Notice. When a Notice to End tenancy is given by a tenant, the tenant cannot withdraw this notice without the consent of the landlord. The landlord did not give consent and re-rented the tenants room for October 01, 2011. Therefore it is my decision that the landlord is entitled to an Order of Possession based on the grounds that the tenant has breach an agreement with the landlord to move from the rental unit.

As the landlord has been successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,550.00** comprised of unpaid rent and the filing fee. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord 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 28, 2011.

Residential Tenancy Branch