



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for unpaid rent; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a townhouse. Pursuant to a written agreement, the fixed term tenancy started on September 1st, 2011, ending on April 30th, 2011, and continuing month-to-month after that date. The rent is \$1350.00 per month and the tenant paid a security deposit of \$675.00.

The landlord testified that the tenant did not pay rent for November 2011, and that \$50.00 in late fee and NSF fee remain outstanding for October rent.

The landlord made a monetary claim as follows:

- Unpaid rent for November 2011:	\$1350.00
- Late fee and bank NSF fee:	\$ 50.00
- Unpaid fees for October 2011:	\$ 50.00
- Sub-total:	\$1450.00

In her documentary evidence, the landlord provided a 10 Day Notice to End Tenancy dated June 8th, 2011; a 10 Day Notice to End Tenancy dated October 3rd, 2011; and a 1 Month Notice to End Tenancy dated October 25th, 2011. On the latter notice, the reason for ending the tenancy states that the tenant breached a material term of the agreement that was not corrected within a reasonable time after written notice to do so. The landlord stated that the previous manager served a 1 Month Notice because the tenant was late paying rent twice before; she said that she did not serve the notice and does not know why it was not a 10 Day Notice.

The tenant testified that she has bank statements showing that the October rent was withdrawn automatically from her account and paid for on October 3rd, 2011. She said that there was no withdrawal made on the 1st because it fell on a Saturday. Although she did not provide that financial transaction as evidence, she states that she should not have to pay a late fee or a NSF fee since the funds were in her account when the withdrawal transaction was made. The landlord clarified that the rent was recovered, but that the fees remain outstanding.

There was no dispute between the parties that rent was not paid for November 2011.

Analysis

The landlord bears the burden to prove the grounds to end the tenancy. Concerning the unpaid rent for October, the landlord did not provide evidence that the tenant did not pay the rent within 5 days after the 10 Day Notice to End Tenancy was served. The landlord did not dispute that rent was not paid; at issue were the two fees of \$25.00. This manager was not employed by the landlord in October; she did not serve the 10 Day Notice for that month and it was apparent that she could not speak with clarity as to whether or not the tenant was still in breach of the Act concerning the fees. Absent that evidence I find on the parties' testimony that rent for October 2011 was paid and that the landlord did not establish sufficient grounds to end the tenancy for October 2011. Therefore the 10 Day Notice to End Tenancy served on October 3rd, 2011 is of no effect.

Concerning November 2011; for some reason the landlord served the tenant with a 1 Month Notice to End Tenancy rather than a 10 Day Notice. Section 52 of the *Residential Tenancy Act* provides in part that in order to be effective, a notice to end tenancy must be in the approved form. The 1 Month Notice does not inform the tenant of relevant information found on the 10 Day Notice, such as, but not limited to; the reason for the notice (unpaid rent); the amount of rent claimed; and the time line by which rent must be paid. Therefore I find that the tenant was not served pursuant to the Act, and I declare the 1Month Notice to End Tenancy of no effect.

Conclusion

The tenancy will continue. The landlord may issue a new Notice to End Tenancy compliant with statute.

The landlord's application is dismissed.

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: November 30, 2011.

Residential Tenancy Branch