



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 for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee.

The parties appeared at the teleconference hearing, confirmed receipt of evidence submitted by the Landlord, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed that they entered into a written fixed term tenancy agreement that began on July 1, 2011 and is set to switch to a month to month tenancy after February 1, 2012. Rent is payable on the first of each month in the amount of \$820.00 and on May 26, 2011 the Tenant paid \$410.00 as the security deposit.

The Landlord affirmed that when the Tenant failed to pay his October 1, 2011 rent a 10 Day Notice to End Tenancy was posted to the Tenant's door on October 19, 2011. A cash payment of \$880.00, which included the \$820.00 rent plus \$10.00 parking plus a \$50.00 NSF fee, was received by the Tenant October 29, 2011 and a receipt for "use and occupancy only" was issued to the Tenant. The Tenant has not paid the rent that was due on November 1, 2011.

The Tenant confirmed receipt of the 10 Day Notice to End Tenancy and advised that this Notice was not posted to his door; rather it was placed underneath his door and was accompanied by a letter from the resident manager which instructed the Tenant to pay the rent in cash no later than October 29, 2011. He states he actually paid the rent the night before, on October 28, 2011 by placing the money through the mail slot.

The Tenant confirmed receiving the receipt dated October 29, 2011 and confirmed that he has not yet paid the November 1, 2011 rent due to his financial difficulties. He noted that the Landlord has not issued him a 10 Day Notice for November rent as of yet.

The Agent requested to proceed with their application for an Order of Possession and a Monetary Order for November 2011 rent. He advised that they are of the opinion that regardless of what the letter stated that was provided by their resident manager the Tenant had the legal obligation to pay his rent within five days of receiving the Notice.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

The evidence confirms the Tenant was issued a letter, along with the 10 Day Notice on October 19, 2011, which indicated the Tenant was required to pay his rent no later than October 29, 2011. After careful consideration of the evidence before me I accept that a reasonable person would interpret that the resident manager had made arrangements for the payment of rent not to be due until October 29, 2011 and that if rent was received on or before that date the matters pertaining to the 10 Day Notice would be remedied.

As the payment of rent, parking, and the NSF fee were received in full by the Landlord by the due date of October 29, 2011, I find the 10 Day Notice to End Tenancy dated October 19, 2011 to be voided and of no force or effect. Accordingly, I dismiss the Landlord's request for an Order of Possession.

The parties agreed that November 1, 2011 rent has not been paid. The Landlord claims for unpaid rent of \$820.00 for November 1, 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. The evidence supports that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore I approve the

Landlord's request for monetary compensation in the amount of **\$820.00** for November 2011 rent.

If rent remains unpaid the Landlord is at liberty to serve the Tenant another 10 Day Notice to End Tenancy and seek another application for an Order of Possession.

Section 7 of the Residential Tenancy Regulation stipulates that a non-refundable fee may be charged for late payment of rent as long as it is stipulated or provided for in the tenancy agreement.

The Landlord is seeking \$50.00 (2 x \$25.00) for late payment fees for October and November 2011 however there is no provision for late payment fees in the tenancy agreement which was provided in the Landlord's evidence. There is mention of an addendum to the tenancy agreement however no copy was submitted in the Landlord's evidence.

Based on the aforementioned I find there to be insufficient evidence before me to support the Landlord's claim of late payment fees, therefore their claim of \$50.00 is dismissed.

The Landlord has sought the return of the filing fee however the Landlord has only been partially successful with their application. Accordingly I award the Landlord recovery of **\$25.00** of their filing fee.

Conclusion

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$845.00** (\$820.00 + \$25.00). This Order is legally binding and must be served upon the Tenant.

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 21, 2011.

Residential Tenancy Branch