



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC 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, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

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 November 1, 2011. Mail receipt numbers were provided in the Landlord's verbal testimony. Based on the Landlord's submission I find the Tenant was sufficiently served with notice of today's proceeding.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant, despite her being served notice of today's hearing in accordance with the Act.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement by failing to pay rent?
2. Has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on April 15, 2011 and is set to end on May 1, 2012. Rent is payable on the first of each month in the amount of \$1,280.00 plus \$60.00 storage locker rental for total of \$1,340.00 per month and the Tenant paid \$640.00 on April 15, 2011, as the security deposit.

The Landlord affirmed that when the Tenant's October 1, 2011 rent payment was returned insufficient funds, a 10 Day Notice to End Tenancy was personally served to the Tenant on October 21, 2011. The Tenant still occupies the rental unit and has not paid the November 1, 2011 rent or storage locker rental. The Landlord is seeking an Order of Possession for as soon as possible and a Monetary Order for both October and November 2011 rent and storage locker rental in the amount of \$2,680.00 (2 x \$1,340.00).

Analysis

Where a tenant is served a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to Section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

In this case the Notice was personally served to the Tenant on October 21, 2011. Accordingly I find the effective date of the Notice is October 31, 2011, pursuant to Section 90 of the Act. Since the Tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on October 31, 2011. Accordingly, I award the Landlord an Order of Possession.

The Landlord claims for unpaid rent of \$1,340.00 for October 1, 2011 rent plus overholding charges of \$1,340.00 for November 2011 as the Tenant is still occupying the rental unit; pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find 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. Accordingly I award the Landlord a monetary claim in the amount of **\$2,680.00** (2 X \$1,340.00).

The Landlord has been successful with her application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Rent and overholding charges (Oct & Nov 2011)	\$2,680.00
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Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,730.00
LESS: Security Deposit \$640.00 + Interest 0.00	<u>-640.00</u>
Offset amount due to the Landlord	<u>\$2,090.00</u>

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Respondent Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$2,090.00**. This Order is legally binding and must be served upon the Respondent 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 28, 2011.

Residential Tenancy Branch