



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 or utilities, to keep all or part of pet and or security deposit, 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 November 4, 2011. Mail receipt numbers were provided in the Landlord's evidence. Based on the written submission of the Landlord I accept that the Tenant has been served notice of this proceeding in accordance with the *Act*.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present his 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 as a result of that breach, pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed that the Tenant took over the rental agreement from his son and daughter in-law and that the Tenant has occupied the rental unit since April 1, 2011. Rent is payable on the first of each month in the amount of \$675.00 and \$337.50 was paid on June 28, 2010 as the security deposit.

The Parties agreed that no rent has been paid for November 2011 and the Tenant stated that he was moving out of the rental unit today, November 30, 2011.

The Landlord affirmed that the Tenant was personally served the 10 Day Notice to End Tenancy on November 2, 2011 for the \$675.00 rent plus the \$25.00 late payment fee.

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.

I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenant failed to pay the rent within 5 days after receiving this notice, and that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession effective November 30, 2011 at 6:30 p.m.

The Landlord claims for the total unpaid rent for November 2011 and December 2011. I note that rent for December is not due until tomorrow, December 1, 2011. Accordingly I may only consider the unpaid rent for November 1, 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due.

Based on the aforementioned 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. Therefore I award the Landlord **\$675.00** for unpaid rent.

The tenancy agreement provides for late payment charges of \$25.00 in accordance with section 7 of the *Residential Tenancy Regulation*, therefore I award the Landlord **\$25.00** for late payment fees for November 2011.

The Landlord has succeeded with his 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:

Unpaid rent for November 2011

\$ 675.00

Late payment fee for November 2011	25.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 750.00
LESS: Security Deposit \$337.50 + Interest 0.00	<u>-337.50</u>
Offset amount due to the Landlord	<u>\$ 412.50</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **November 30, 2011 at 6:30 p.m. after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$412.50**. 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 30, 2011.

Residential Tenancy Branch