



Dispute Resolution Services

Page: 1

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 for an Order of possession, a monetary Order for unpaid rent and the filing fee, and an Order to retain the security deposit in partial satisfaction of the claim.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to a monetary Order for unpaid rent and the filing fee and an Order to keep all or part of the security deposit?

Background and Evidence

The Landlord and Tenant agree that they have a month to month tenancy agreement which commenced on May 01, 2008. The parties agree that the rent is \$935.00 per month, due on the first of the month, and that the Landlord has a security deposit of \$447.50 plus interest from the date it was paid on May 01, 2008.

The Tenant testified that he received the Notice to End Tenancy at his rental unit on August 29, 2011 the same date the Landlord posted the Notice at his residence. The Notice to End Tenancy informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Notice stated that the Tenant had until September 10, 2011 to move out of the rental unit. The Tenant did not file an Application to dispute the Notice within 5 days.

The Tenant confirmed that he is still in the rental unit at this time. The Landlord stated that the Tenant owes \$3,540.00 rent, comprised of \$935.00 for 3 months (August, September, and October 2011) and \$735.00 remaining for July 2011. The Tenant agreed at the hearing that he does owe the Landlord \$3,540.00 in outstanding rent. The Tenant testified that he is waiting for a disability pension that he has applied for and also for SAFER for low income seniors. He states that when these monies come in they will be retroactive for the months he owes rent and will total about \$500.00 per month.

The Tenant states that his income is currently \$437.00 per month in CPP and that he is not employed. The Tenant also stated that additionally he plans to work for a ski hill when the ski season starts.

The Landlord stated that he is seeking an Order of possession and a monetary Order for the outstanding rent plus the filing fee. He also stated that he would like to have an Order to keep the security deposit plus interest to offset the amounts owed to him.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's evidence that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on August 29, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was served by posting at the rental unit, it was deemed to have been served by September 01, 2011, which is three days from the date posted. The Notice states that the Tenant had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end from the service date. The Tenant did not pay the outstanding rent and did not apply to dispute the Notice to End Tenancy within five days from the date of service. The deadline to do so was September 06, 2011. Although the Landlord indicated that the Tenant had until September 10, 2011 to vacate the premises, the earliest effective date is 10 days from the date of service, thus this is corrected to September 11, 2011 based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days and the Tenant did not file an Application to dispute the Notice.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on September 11, 2011, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an Order of possession.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. The Tenant agrees that he owes the Landlord a total of \$3540.00 for rent for the months of July, August, September and October 2011. I find that the Landlord has established a monetary claim of \$3540.00.

As the Landlord has succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the balance of the amount owing to the Landlord to \$3,590.00.

The Landlord holds the Tenant's security deposit of \$447.50, plus interest (\$4.49) to date. I order that the Landlord retain the security deposit plus interest, which add up to \$451.99, in partial satisfaction of the claim. I grant the Landlord an Order under section 67 for the balance due of **\$3,138.01**.

Conclusion

I find that the Landlord is entitled to an Order of possession not later than **two (2) days after service** of this Order on the Tenant. This Order must be served on the Tenant and may be filed in Supreme Court.

I find that the Landlord is entitled to \$3,590.00 comprised of unpaid rent and the filing fee. As I have Ordered that the Landlord retain the security deposit and interest totaling \$451.99, I find that the Landlord is entitled to monetary Order for the balance owing pursuant to section 67 against the Tenant in the amount of **\$3,138.01**. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The Orders accompany the Landlord's copy of this decision..

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 01, 2011.

Residential Tenancy Branch