



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 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.

The Landlord provided affirmed testimony that she served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on October 01, 2011, and provided the receipt and tracking slip from Canada Post as evidence. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter(s)

The Landlord made an oral request at the hearing to amend the Application to include rental income lost for October 2011 (\$859.00). Pursuant to section 64(3) of the Act I am granting the Landlord's request to amend the Application to include the unpaid rent for October as it is reasonable to do so. I find that the Tenant is aware that rent for October is also outstanding, and he remained in the rental unit after October 01, 2011 without paying rent for the month.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of possession and a monetary Order for unpaid rent and recovery of the filing fee?

Background and Evidence

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy agreement states that the tenancy commenced on January 01, 2011, and rent is due on the first day of the month in the amount of \$859.00. The Tenant paid the Landlord a security deposit of \$429.50.

The Landlord testified that the Tenant provided an NSF cheque for September 2011. The Landlord testified that she served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the Tenant's door at 6:30 P.M. on September 07, 2011.

The Landlord stated that the Tenant received the Notice and responded with a promise to pay, explaining that he had been out of town working when his payment was NSF. The Landlord stated that the Tenant did not pay the outstanding rent and did not move out within ten days of being served with the Notice. The Landlord filed an Application for Dispute Resolution on September 28, 2011.

The Landlord testified that the Tenant did not pay rent for October 2011 and he remained in the rental unit during early October. The Landlord stated that the Tenant was difficult to reach by phone; as a result she posted a Notice on his door to do a routine suite inspection. When she did a routine suite inspection on October 14, 2011 she found that the Tenant had vacated the rental unit. The Landlord is still requesting an Order of possession.

The Landlord also requests a monetary Order for \$1,718.00 for outstanding rent for September and October 2011. The Landlord has applied to keep all or part of the security deposit towards the unpaid rent.

The Landlord has also applied for reimbursement of the \$50.00 filing fee for this proceeding.

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 September 07, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was served by posting it on the door of the rental unit, it was deemed to have been served by September 10, 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 15, 2011. Although the Landlord indicated that the Tenant had until September 17, 2011 to vacate the premises, the earliest effective date is 10 days from the date of service, thus this is corrected to September 20, 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 20, 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 submitted into evidence by the Landlord states that rent is due on the first of the month. I find that the Tenant failed to pay rent for September and did not vacate the rental unit within 10 days of service of the Notice. I also find that the Landlord did not receive rental income for the month of October on the rental unit and that the Tenant is aware that he is in arrears for the rent for October. As a result, I find that the Landlord has established a monetary claim of \$1,718.00, comprised of rent owing for September and rental income lost for October 2011.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary Order against the Tenant bringing the total amount owing to \$1,768.00.

I Order that the Landlord retain the security deposit (\$429.50), in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$1,338.50**.

Conclusion

I find that the Landlord is entitled to an Order of possession effective **two days after service** on the Tenant. This Order must be served on the Tenant and may be filed in the Supreme Court.

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary Order for the balance due in the amount of **\$1,338.50**. 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