



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 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 served the Tenant by registered mail with the Application for Dispute Resolution and Notice of Hearing on October 14, 2011. The Landlord provided a copy of the receipt and tracking information of the registered mail as proof of service. 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.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order for unpaid rent and the filing fee and an order to retain all or part of the security deposit?

Background and Evidence

The Landlord stated that they had a verbal tenancy agreement with the Tenant. The Landlord testified that the tenancy began on June 15, 2011; the rent was \$640.00 per month due on the first of the month; and he collected a security deposit from the Tenant in the amount of \$320.00.

The Landlord stated that the Tenant paid rent by either cash or cheque. The Landlord stated that the Tenant did not pay her rent on October 01, 2011. The Landlord testified that he served the Tenant with a 10 Day Notice to End Tenancy for unpaid rent on October 02, 2011 at 3:00 P.M. by posting it on the door to her rental unit and that this was witnessed by a neighbour. The Landlord provided a proof of service document for

the 10 Day Notice with his signature and the signature of the witness on it. The Landlord testified that the Tenant came to him upset after receiving the 10 Day Notice and said that she lost her job two months ago. The Landlord advised her that the rent was due as stated on the Notice. The Landlord stated that the Tenant remained upset and declined to speak with the Landlord further and did not pay the rent. The Landlord filed the Application for Dispute Resolution after the Tenant did not move out of the rental unit by October 11, 2011, as specified in the Notice. The Landlord stated that the Tenant started moving belongings out of the rental unit on or around October 23, 2011. The Landlord stated that the Tenant came back to the rental unit several times but has failed to return the keys to the Landlord.

The Landlord is requesting an order of possession on the rental unit.

The Landlord is requesting a monetary order for \$640.00 against the Tenant for non-payment of rent for October 2011 and \$50.00 for the filing fee for the Application for Dispute Resolution.

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 October 02, 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 October 05, 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 October 10, 2011. Although the Landlord indicated that the Tenant had until October 11, 2011 to vacate the premises, the earliest effective date is 10 days from the date of service, thus this is corrected to October 15, 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 October 15, 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, based on the testimony at the hearing, the verbal tenancy agreement is that rent is due on the first of the month. I find that the Tenant failed to pay rent for October and did not vacate the rental unit within 10 days of service of the Notice. As a result, I find that the Landlord has established a monetary claim of \$640.00, comprised of rent owing 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 \$690.00.

I order that the Landlord retain the security deposit (\$320.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$370.00**.

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 **\$370.00**. 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 10, 2011.

Residential Tenancy Branch