



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 to recover the filing fee for the Application.

The Landlord and Tenant attended the hearing gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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 the filing fee?

Background and Evidence

The parties confirmed that they have a tenancy agreement which commenced on June 01, 2011. The parties also confirmed that rent is \$700.00 per month due on the first of each month. The parties confirmed that the Landlord received a security deposit of \$350.00 from the Tenant on May 31, 2011. The parties stated that there is a written tenancy agreement however this was not provided as evidence prior to the hearing.

The Tenant stated that she was personally served with the 10 Day Notice to End Tenancy for unpaid rent on October 11, 2011 in the lobby of the building she resides in. The Landlord states that the Tenant has the date wrong, and that it was October 10, 2011 that she was served, however, he stated that he will accept October 11, 2011 as the service date as the Tenant has confirmed it was served upon her. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days, and that the outstanding rent as of October 01, 2011 was \$1,400.00. The Notice also explains the Tenant had five days to dispute the Notice. The Landlord stated that the Tenant has provided NSF cheques for September and October and has also failed to pay the rent for November.

The Landlord has requested to amend their Application to add unpaid rent for November 2011 in the amount of \$700.00 as the Tenant is still in the rental unit at the time of the hearing. The Tenant confirmed that the rent for November has not been

paid at this time and that she still resides in the rental unit. As a result, I grant the Landlord's request to amend their Application to include the unpaid rent for November.

The Tenant stated that she lost her job in May 2011, and since that time she has been to EI to request EI. The Tenant states that she has checked with the bank several times and her bank account is overdrawn and she does not know what is taking EI so long to deposit her payments. The Tenant states that when the Landlord told her that her rent cheques were NSF he requested she pay cash. The Tenant states that she declined to pay cash as she is still waiting for EI to put money in her bank account. The Tenant confirmed that she is still in the rental unit and has no plans to move out.

At the hearing the Landlord and Tenant confirmed that due to the Tenant's situation with her bank account the Landlord has been unable to cash any rent cheques for September, October, and November as a result the outstanding rent due is: \$2,100.00.

The Landlord is requesting an order of possession as soon as possible. The Landlord is also requesting a monetary order for the outstanding rent in the amount of \$2,100.00.

Analysis

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

The evidence of both parties confirmed that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

The Landlord and Tenant agree that the Notice was served. Based on their statements, I accept that the Notice was personally served on October 11, 2011 on the Tenant. As the Notice was personally served to the Tenant it was deemed to have been served the same day. 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 16, 2011. The Landlord indicated that the Tenant had until October 20, 2011 to vacate the rental unit, however, this is corrected to October 21, 2011 as this is 10 days from the date of service, pursuant to the provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days, the Tenant did not move out, 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 21, 2011, which is 10 days after the deemed service 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 she has been unable to pay rent for September, October, and November 2011. I find that the Landlord has established a monetary claim of \$2,100.00.

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 \$2,150.00.

The Landlord holds the Tenant's security deposit of \$350.00. I order that the Landlord retain the security deposit in partial satisfaction of the claim. I grant the Landlord an order under section 67 for the balance due of **\$1,800.00**.

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 \$2,150.00 comprised of unpaid rent and the filing fee. As I have ordered that the Landlord retain the security deposit of \$350.00, 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 **\$1,800.00**. 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 17, 2011.

Residential Tenancy Branch