



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 pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim.

The notice of hearing was served on the tenant on October 25, 2011, by registered mail. The landlord filed a tracking number. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order to recover unpaid rent, the filing fee and to retain the security deposit?

Background and Evidence

The tenancy started on August 29, 2011 for a fixed term of six months. The monthly rent is \$950.00 due in advance on the first of each month. The tenant paid a security deposit of \$475.00. The landlord filed a copy of the tenancy agreement. A term in the agreement stipulates that a late fee of \$25.00 is applicable for rent paid after the first of each month.

The landlord testified that the tenant owed \$59.90 for August and failed to pay rent for October and November 2011. On October 06, 2011, the landlord served the tenant with a ten day notice to end tenancy. The tenant paid \$1,250.00 and the landlord issued a receipt for use and occupancy only. At the time of the hearing, the tenant owed \$59.90 for August, \$650.00 for November and \$50.00 for late fees for two months for a total of \$759.90.

The landlord is applying for an order of possession effective two days after service on the tenant and a monetary order in the amount of \$809.90.00 which consists of outstanding rent (\$759.90) and the filing fee (\$50.00).

Analysis

Based on the sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on October 06, 2011 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord is entitled to \$759.90 for unpaid rent. Since the landlord has proven her case, she is also entitled to the recovery of the filing fee of \$50.00. I order that the landlord retain the security deposit of \$475.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$334.90. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order in the amount of **\$334.90**.

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 16, 2011.

Residential Tenancy Branch