



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.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Since the tenancy has not yet ended, the landlord's application to retain the security deposit is dismissed with leave to reapply.

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 and the filing fee?

Background and Evidence

The tenancy started on August 15, 2009. The monthly rent is \$1,200.00 due in advance on the first of each month. The tenant paid a security deposit of \$600.00. 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 failed to pay rent for October 2011. On October 03, 2011, the landlord served the tenant with a ten day notice to end tenancy. The tenant stated that due to an incident that occurred in early September, the landlord told her that she did not have to pay rent for October. The landlord denied having told the tenant so. The tenant did not have any documentary evidence to support her testimony.

The tenant paid rent for November. At the time of the hearing, the tenant owed \$1,200.00 for October and \$25.00 for late fees for a total of \$1,225.00.

The landlord is applying for an order of possession effective on November 30, 2011 and a monetary order in the amount of \$1,275.00 which consists of outstanding rent (\$1,200.90), late fee (\$25.00) 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 03, 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 \$1,225.00 for unpaid rent and late fee. Since the landlord has proven her case, she is also entitled to the recovery of the filing fee of \$50.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$1,275.00. 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 on or before 1:00 p.m. on November 30, 2011 and a monetary order in the amount of **\$1,275.00**.

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