



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking an order of possession based on a one month Notice to End Tenancy for cause, for monetary orders for unpaid rent, for monetary orders for alleged damage to the rental unit, to keep the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

The Landlord appeared at the teleconference hearing, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not appear. The Landlord testified she sent the Tenant the Notice of Hearing and the Application by registered mail, on October 17, 2011. Two days later the registered mail was returned to the Landlord, with an indication the Tenant had moved. The Landlord went to the rental unit on October 22, 2011, and served an adult who apparently resides with the Tenant with the Notice and Application. Following this the Tenant contacted the Landlord and told her she had not moved out of the rental unit. Therefore, I find that the Tenant has been duly served in accordance with the Act, by service on an adult who apparently resides with the Tenant.

Based on the above, and other evidence provided by the Landlord, I further find that the Tenant is attempting to avoid service of any documents related to this proceeding.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary relief sought?

Background and Evidence

The tenancy began on August 1, 2011. The monthly rent was set at \$600.00 per month and the Tenant paid a security deposit of \$300.00.

Problems arose quickly in the tenancy and the Landlord sent the Tenant a warning letter.

When the problems did not end, the Landlord served the Tenant with a one month Notice to End Tenancy for cause, by posting to the rental unit door on September 17, 2011. In evidence the Landlord provided two signed statements from two third party witnesses who saw the Landlord post this Notice to the door.

The Landlord testified that the Tenant had not paid all the rent for October 2011, and still owed \$300.00. The Landlord further testified that the Tenant had failed to pay the rent for November 2011, and still owes \$600.00.

The Landlord alleges that there may be damage to the rental unit.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant has breached the Act by failing to vacate the rental unit as required under the one month Notice to End Tenancy, and by failing to pay rent when due.

Under section 47 of the Act, the Tenant had ten days to dispute the one month Notice to End Tenancy and failed to do so. Therefore, under section 47 the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, which was October 31, 2011.

The Tenant has failed to vacate and therefore, I grant the Landlord an order of possession for the rental unit effective two days after service of the Tenant. I order that the Landlord may serve the order of possession by posting a copy of it to the door of the rental unit and this is sufficient service for the purposes of the Act.

I also find that the Landlord has established a total monetary claim of **\$950.00**, comprised of the \$300.00 rent for October and \$600.00 for November, of 2011, and the \$50.00 filing fee for the Application.

I allow the Landlord to retain the security deposit of \$300.00 in partial satisfaction of the claim, and I grant the Landlord a monetary order for the balance due of **\$650.00**.

As the Tenant has not yet vacated the rental unit, the Landlord's claim for damages to the unit is premature. The Landlord's claim for damages is dismissed with leave to reapply.

Conclusion

I find the Tenant is evading service of documents in these proceedings.

I order that the Tenant must vacate the rental unit as she failed to dispute the Notice to End Tenancy.

The Landlord is granted a monetary order for unpaid rent and may keep the security deposit in partial satisfaction of the claim, and has an order for the balance due, which includes the filing fee for the Application.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 08, 2011.

Residential Tenancy Branch