



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for an order of possession for unpaid rent and a monetary order for unpaid rent. During the course of the hearing I allowed the Landlords to amend this Application to include a claim against the security deposit, for unpaid rent for November of 2011, and for the \$50.00 filing fee for the Application.

The Landlords appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he served the Tenant with the Application for Dispute Resolution and Notice of Hearing in person on October 19, 2011. Despite this the Tenant did not appear at the hearing. I find the Tenant has been duly served in accordance with the Act.

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

Has the Tenant breached the Act or tenancy agreement, entitling the Landlords to an Order of Possession and monetary relief?

Background and Evidence

Based on the affirmed testimony of the Landlord, I find that the Tenant was personally served with a 10 day Notice to End Tenancy for non-payment of rent on October 4, 2011. The Tenant signed an acknowledgement of receipt of the Notice.

The Notice had an effective date of October 15, 2011.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of the date of service. The Notice also explains the Tenant had five days to dispute the Notice from the date of service.

The Landlord testified that the Tenant owes rent for September, October and November of 2011. The monthly rent is \$625.00. The Landlord testified that the Tenant has made two payments on account of the rent due, totaling \$125.00.

The Tenant did not make an Application to dispute the Notice.

Analysis

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

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlords are entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Tenant has also not paid rent for November 2011, and the Landlords will suffer a loss of rent for the month. Therefore, under section 64 of the Act I allow the Landlords' claim to be amended to include this additional month of rent.

As the Landlords have suffered a loss and are still holding the security deposit, I allow them to amend the Application to include a claim against the security deposit, pursuant to section 64 and 72 of the Act.

I find that the Landlords have established a total monetary claim of **\$1,800.00**, comprised of three months' rent at \$625.00 per month, less the \$125.00 payment of the tenant, plus the \$50.00 fee paid by the Landlord for this application. Calculated as $(3 \times 625.00 = 1,875.00) - 125.00 = \$1,750.00$ and $\$1,750.00 + \$50.00 = \$1,800.00$

I order that the Landlords may retain the deposit of \$312.00 in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$1,488.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlords are granted an order of possession, may keep the security deposit in partial satisfaction of the claim and are granted a monetary order for the balance of rent due.

This decision is final and binding on the parties, except as otherwise provided in 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 10, 2011.

Residential Tenancy Branch