



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 the filing fee, and an order to retain the security deposit in partial satisfaction of the claim.

The Landlord provided affirmed testimony that she served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on November 17, 2011, and provided the receipt and tracking slip from Canada Post as evidence. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter(s)

The Landlord has applied for unpaid rent for November 2011 and lost rental income for December 2011 and January 2012. The Hearing was held on December 02, 2011. At the Hearing the Landlord explained that the Tenant did not comply with the 10 Day Notice to End Tenancy, which was served on her on November 02, 2011. The Landlord stated that the Tenant had not moved out of in the rental unit when they checked it on December 01, 2011, and had not paid rent for November and the Landlord received no rental income for December. At the hearing, the Landlord agreed it was premature to request the rental income for January 2012. As a result I am dismissing the Landlord's request for rental income for January 2012, with liberty to reapply.

I find that the Tenant is aware that rent for December is also outstanding, and she has still not vacated the rental unit as of December 01, 2011.

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 recovery of the filing fee?

Background and Evidence

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy agreement states that the tenancy commenced on October 20, 2011, and rent is due on the first day of the month in the amount of \$825.00. The Tenant paid the Landlord a security deposit of \$412.50.

The Landlord testified that the Tenant paid pro-rated rent for October 2011 when she moved in on October 20, 2011. The Landlord states the Tenant failed to pay the rent due for November. The Landlord testified that she served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent in person at 11:25 A.M. on November 02, 2011. The Landlord stated that the Tenant advised her that she would go to the Ministry of Social Development to get the rent money for the Landlord.

The Landlord stated that she spoke with the Tenant on November 08, 2011 as the rent had not been paid rent within five days. The Landlord states that the Tenant indicated that she had still not spoken to the Ministry of Social Development about getting a rent cheque for the Landlord. The Landlord advised the Tenant that the Notice required her to vacate the rental unit by November 12, 2011 as the rent was not paid and requested to schedule a move out inspection with the Tenant by providing her with two suggested times and dates. The Tenant did not pick a date or time, so the Landlord advised the Tenant that they would be coming at noon on November 12, 2011 to perform the move out inspection. When the Landlord arrived at the rental unit on November 12, 2011 to do the move-out inspection the Tenant was not at home, however the door was open and the Tenant's furniture and belongings were still in the unit. The Landlord stated that the Tenant did not move out within ten days of being served with the Notice. The Landlord filed an Application for Dispute Resolution on November 14, 2011.

The Landlord testified that the Tenant did not pay the outstanding rent for November 2011 and that they had checked the rental unit again on December 01, 2011 and the Tenant has still not moved her belongings and furniture out. The Landlord states they have been trying to speak with the Tenant but that she is not responding to them. The Landlord is requesting an order of possession.

The Landlord also requests a monetary order for \$1650.00 for outstanding rent for November (\$825.00) and December 2011 (\$825.00). The Landlord has applied to keep all or part of the security deposit (\$412.50) towards the unpaid rent.

The Landlord has also applied for reimbursement of the \$50.00 filing fee for this proceeding.

Analysis

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

I accept the Landlord's evidence that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on November 02, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was personally served on the Tenant on November 02, 2011, 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 November 07, 2011. The Landlord correctly indicated on the Notice that the Tenant had until November 12, 2011 to vacate the premises, based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days 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 November 12, 2011, which is 10 days after the effective 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 submitted into evidence by the Landlord states that rent is due on the first of the month. I find that the Tenant failed to pay rent for November and did not vacate the rental unit within 10 days of service of the Notice. I also find that the Landlord did not receive rental income for the month of December on the rental unit and that the Tenant is aware that she is in arrears for the rent for December. As a result, I find that the Landlord has established a monetary claim of \$1,650.00, comprised of rent owing for November (\$825.00) and rental income lost for December 2011 (\$825.00).

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenant bringing the total amount owing to \$1700.00.

I order that the Landlord retain the security deposit (\$412.50), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,287.50.**

Conclusion

The Landlord's request for rental income for January 2012, is dismissed with liberty to reapply.

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant and may be filed in the Supreme Court.

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$1,287.50**. 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: December 02, 2011.

Residential Tenancy Branch