



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, a late fee, 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 25, 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)

On the Landlord's Application she has listed two individuals as tenants, JR and AL. The Landlord submitted the tenancy agreement into evidence prior to the hearing. The tenancy agreement shows that JR and another person, AA are tenants. The Landlord stated that AA gave proper notice and moved out of the rental unit for September 2011. The Landlord states that she wants to add AL as a tenant, however, she has not obtained a new tenancy agreement with JR and AL both on it. JR is the only tenant who is signatory to the existing tenancy agreement. As the Landlord has not entered into a tenancy agreement with AL, I find that I cannot deem AL to be a tenant as under the Act I have no authority to amend the existing tenancy agreement.

For the purposes of the balance of this decision my reference to "the Tenant" refers to JR only.

The Landlord stated that the Tenant did not vacate the rental unit in accordance with the 10 Day Notice to End Tenancy and did not pay the rent. The Landlord states that the Tenant finally moved out on November 30, 2011. The Landlord states that they now have possession of the rental unit and no longer require an order of possession. As a

result, I have amended the Landlord's Application as requested to reflect that they are no longer seeking an order of possession.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to a monetary order for unpaid rent, a late fee, and the filing fee, and an order to retain the security deposit in partial satisfaction of the claim?

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 May 01, 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 \$450.00. The tenancy agreement also contains a clause that the Landlord may charge a late fee of \$25.00 for late payment of rent.

The Landlord testified that the Tenant overpaid the rent for September 2011, in the amount of \$106.25. The Landlord stated that they credited this to the Tenant's account. The Landlord states that the Tenant paid the full rent of \$825.00 for October 2011, and the credit of \$106.25 carried forward. The Landlord states that the Tenant failed to pay the rent due for November. The Landlord states that they applied the credit of \$106.25 to the \$825.00 rent owing for November, and that that Tenant owes them a balance of \$718.75 plus a late fee of \$25.00, for a total of \$743.75 owing. The Landlord testified that he served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent by posting it at the rental unit on November 08, 2011. The Landlord stated that the Tenant contacted him and made promises to pay the rent. The Tenant did not pay the outstanding rent and did not move out within 10 days of the Notice being served.

The Landlord stated that the Tenant moved out on November 30, 2011, but provided the Landlord with no written forwarding address. The Tenant did not pay rent for November 2011 and the Landlord stated he received no rental income for December, because the Tenant left the rental unit damaged so he has to repair it to rent it out. The Landlord has not filed a claim for damage to the rental unit at this time. The Landlord notified the Tenant that he would be claiming for rental income loss of \$825.00 for December in his Application filed on November 23, 2011 as the Tenant had not moved out as required by the Notice.

The Landlord also requests a monetary order for \$1,618.75 for outstanding rent for November (\$743.75) and December 2011 (\$825.00), plus a late fee of \$25.00 for the November's rent, and the filing fee of \$50.00. The Landlord has applied to keep all or part of the security deposit (\$450.00) towards the monetary claim.

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 08, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was posted at the rental unit on November 08, 2011, it was deemed to have been served within 3 days. 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 16, 2011. The Landlord indicated on the Notice that the Tenant had until November 18, 2011 to vacate the premises, however this date corrects to November 21, 2011 (10 days from the deemed service date) pursuant to 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 21, 2011, which is 10 days after the effective date of the Notice.

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 the full rent for November, as the Landlord only received \$106.25 in rent, leaving a balance owing of \$718.75 for November 2011.

I find that the tenancy agreement clearly states that the Landlord is entitled to a late fee of \$25.00, and as the rent was late for November 2011, I find that the Landlord is entitled to claim this fee which is allowed by the Act and Regulation.

As the Tenant was still in the rental unit at the time of the Landlord's Application on November 23, 2011, the Landlord informed the Tenant through his Application that he was claiming the rental income loss for December. I find that Tenant was aware of the Landlord's claim for the December rental income loss. I find that the Landlord is entitled to the rental income loss for December 2011 as he was not been able to rent out the rental unit for December 2011.

I find that the Landlord has established a monetary claim of \$1,568.75, comprised of rent owing for November (\$718.75), a late fee of \$25.00 for November, 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 \$1,618.75.

I order that the Landlord retain the security deposit (\$450.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,168.75**.

Conclusion

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 **\$1,168.75**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies 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 12, 2011.

Residential Tenancy Branch