

## **DECISION**

Dispute Codes      OPR, MNSD, FF

### Introduction

This is an application filed by the Landlord for an order of possession resulting from a 10 day notice to end tenancy for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

### Background and Evidence

This Tenancy began on June 1, 2011 on a month to month basis as shown in the submitted copy of the signed tenancy agreement. The monthly rent is \$1,800.00 and is payable on the 1<sup>st</sup> of each month. The Tenant disputes the monthly rent shown on the Tenancy Agreement stating that when he signed it the monthly rent was \$600.00.

The Landlord states that the notice of hearing and evidence package was served by registered mail on December 6, 2011 as shown in the submitted Canada Post Registered Mail Receipt. The Tenant states that he just receiving the package a few days before the hearing and was unable to respond with any evidence and as such has filed no evidence in response to this application.

The Landlord states that the 10 day notice to end tenancy for unpaid rent was served by posting on the door on November 22, 2011. The notice failed to display an effective date. The notice showed that \$1,800.00 was the amount of rent due on November 1, 2011. The Landlord states that only \$800.00 of the \$1,800.00 rent for November was paid. The Landlord states that rent for December of \$1,800.00 remains unpaid. The Tenant states that he never received the 10 day notice. The Landlord's boyfriend, I.H. attended and states that he was present when the notice was posted. The Tenant disputes the Landlord's claims and states that he has paid the rent. The Tenant states that rent is normally paid in cash and he has never been issued a receipt. The Landlord confirms accepting rent in cash without issuing a receipt.

The Landlord is seeking an order of possession and to be able to retain the \$600.00 security deposit for unpaid rent.

### Analysis

As both parties have attended the hearing by conference call and have made reference to the Landlord's evidence package, I am satisfied that the Tenant has been properly served with the notice of hearing package by registered mail.

The onus or burden of proof is on the party making the claim, in this case the Landlord is responsible as she has made the application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Section 52 of the Residential Tenancy Act states,

#### **Form and content of notice to end tenancy**

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The notice submitted into evidence displays no effective date as required under the Act. As such, I find that the Landlord's application based upon the 10 day notice to end tenancy for unpaid rent dated November 22, 2011 is set aside and the Tenancy shall continue. As the Tenancy is continuing I decline to make any order for the disposition of the security deposit.

### Conclusion

The Landlord's application for an order of possession is dismissed without leave to reapply.

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 15, 2011.

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Residential Tenancy Branch