



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application made November 15, 2011 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for an Order of Possession and for a Monetary Order for unpaid rent.

I accept the Landlord’s evidence that the Tenant was served with this application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of 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

The Landlord states that the Tenants moved out of the unit on November 19, 2011 and agreed to attend a move-out inspection on November 19, 2011. The Tenant did not show for the inspection. On November 22, 2011, the Landlord amended the application to claim an increased amount for damages to the unit and served the amended application for dispute resolution by registered mail to the dispute address.

The Act provides the following requirements for service of this amended Application

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As the Landlord was aware that the Tenant had vacated the unit and no longer resided at the unit, I find that serving the amended application to the unit's address is not in compliance with the above service provisions of the Act. Accordingly, I dismiss this part of the application with leave to reapply.

As the Tenants have vacated the unit, I also dismiss the Landlord's claim for an Order of Possession.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed for unpaid rent?

Background and Evidence

The tenancy began on April 2, 2009. The Tenants vacated the unit on November 19, 2011 following the receipt of a 10 day Notice to end tenancy for non payment of rent, personally served on the Tenants on October 15, 2011. Rent in the amount of \$1,060.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$500.00. The Tenant failed to pay rent for October and November 2011. The Landlord claims unpaid rent for October, November and December 2011.

Analysis

Based on the undisputed evidence of the Landlord, I find that the Landlord is entitled to the amount of **\$2,120.00** for unpaid rent for October and November 2011. The Landlord is also entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$2,170.00**. Setting the security deposit plus interest in the amount of **\$500.00** off this entitlement leaves the amount of **\$1,670.00** owed by the Tenant to the Landlord.

As the Landlord has been given leave to reapply for damages to the unit, I dismiss the Landlord claim for unpaid rent for December 2011 and give him leave to reapply for lost rental income that may arise as a result of damages to the unit.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,670.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 01, 2011.

Residential Tenancy Branch