



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, MNR, MNSD, CNR, MNDC, RP, FF*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in satisfaction of his claim. The tenant applied to cancel the notice to end tenancy and for an order directing the landlord to carry out repairs. The tenant also applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

During the hearing the landlord requested that his application be amended to withdraw the portion of his application to retain the security deposit. He stated that he would deal with the return of the deposit directly with the tenant after she moves out.

Accordingly this hearing only dealt with the landlord's application for a monetary order for unpaid rent and for the filing and the tenant's application to cancel the notice, to order the landlord to carry out repairs and for the filing fee.

Issues to be decided

Is the landlord entitled to an order of possession and a monetary order for unpaid rent and the filing fee?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on August 15, 2011. The rent is \$850.00 per month due on the first of each month. The rental unit is located in the basement of a two level home. The tenant is required to pay 30% of the utilities.

The landlord stated that the tenant agreed to do some repairs to the floor of the rental unit in lieu of rent for November. The landlord stated that the tenant has not completed this work. The tenant failed to pay rent for December and on December 03, 2011 the landlord served the tenant with a ten day notice to end tenancy.

The tenant also did not pay any utilities since the start of tenancy. At the time of the hearing, the tenant owed the landlord \$850.00 for rent plus \$125.00 for utilities. The landlord is applying for an order of possession effective two days after service on the tenant and a monetary order in the amount of \$850.00 for unpaid rent, plus \$125.00 for utilities plus \$50.00 for the filing fee.

Analysis

Based on the sworn testimony of the both parties, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on December 03, 2011 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application within five days, pursuant to Section 46 to set aside the notice to end a residential tenancy.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I also find that the landlord is entitled to \$850.00 for unpaid rent plus \$125.00 for utilities. Since the landlord has proven his case he is also entitled to the recovery of the filing fee of \$50.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$1,025.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Since the tenancy is ending, an order to direct the landlord to carry out repairs is moot. The tenant must also bear the cost of filing her application.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$1,025.00**. The tenant's application is dismissed in its entirety.

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 21, 2011.

Residential Tenancy Branch