



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and, authorization to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Procedural notes

The female tenant (herein referred to by initials JJ) submitted that she was not served with the hearing documents by the landlord. Rather, she received a copy of the hearing documents from her co-tenant. JJ stated that she had read the landlord's application and evidence and wished to be heard in this matter. I deemed JJ sufficiently served under section 71 of the Act.

After cautioning the tenants about conduct at a hearing, in accordance with the Rules of Procedure, I determined it necessary to mute JJ while I took testimony from the landlord and the male co-tenant. JJ was un-muted after hearing from the landlord and co-tenant and provided an opportunity to be heard.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced November 1, 2011 and the tenants paid a \$375.00 security deposit. The tenants are required to pay rent of \$750.00 on the 1st day of every month. The parties were in dispute as to whether there is a signed tenancy agreement and whether the tenancy was on a month-to-month or a six-month fixed term.

It was undisputed that the tenants did not pay rent for December 2011. The landlord personally served the male tenant with a 10 Day Notice to End Tenancy for Unpaid Rent indicating rent of \$750.00 was unpaid as of December 1, 2011. The landlord testified the Notice was served December 2, 2011. The male tenant testified he received the Notice December 5, 2011.

The tenant stated they did not dispute the Notice and verbally told the landlord they would be moving out at the end of December 2011.

The landlord requested compensation of \$1,875.00 representing unpaid rent for December 2011; loss of rent for January 2012; plus the security deposit. Documentary evidence provided for this proceeding was a copy of the 10 Day Notice.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the tenants did not pay the outstanding rent or dispute the Notice and more than 10 days has passed since the tenants were served the 10 Day Notice, I find the tenancy has ended and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

I find the landlord entitled to recover unpaid rent for the month of December 2011. I also award the landlord the filing fee paid for this application. I further authorize the landlord to retain the security deposit in partial satisfaction of the rent owed the landlord.

I make no award for the anticipated loss of rent for January 2012 as the landlord has not incurred a loss for January 2012 as of the date of this hearing. The landlord is at liberty to make another application if she wishes to pursue such a claim against the tenants. Further, as explained to the landlord during the hearing, a security deposit is not added to the amounts claimed for compensation; rather, if the landlord is authorized to retain the security deposit it reduces the amount of the Monetary Order.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

December 2011 rent	\$ 750.00
Filing fee	50.00
Less: security deposit retained by landlord	<u>(375.00)</u>
Monetary Order	\$ 425.00

The landlord must serve the Monetary Order upon the tenants and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord is authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$425.00 to serve upon the tenants.

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 29, 2011.

Residential Tenancy Branch