



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, and was delivered in person to the tenant on November 18, 2011.

The landlord appeared, gave sworn testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order due to unpaid rent?

Background and Evidence

The landlord testifies that this month to month tenancy started on July 23, 2010. Rent for this unit is \$650.00 per month due on the first day of each month in advance. The landlord states there are two named tenants on the tenancy agreement who are mother and son but as he always dealt with the mother over tenancy issues and rent the landlord only served the mother with the 10 Day Notice and application for dispute resolution.

The landlord testifies that the tenant failed to pay all the rent owed or October, 2011 leaving outstanding rent of \$150.00. The tenant paid \$50.00 towards the end of October, 2011 leaving rent arrears of \$100.00. The tenant paid all the rent due for November, 2011 on November 01, 2011 but continued to owe \$100.00. The landlord served the tenant with a 10 Day Notice to End Tenancy on November 04, 2011 by posting the Notice to the tenants' door. The Notice has an effective date of November 14, 2011.

The landlord testifies the tenant paid rent of \$700.00 on December 01, 2011. The landlord states he called the Residential Tenancy Branch for advice as to whether or not he could accept this rent after issuing a 10 Day Notice to End Tenancy and was advised that he could accept it. The landlord states he did not inform the tenant that he was accepting this rent for use and occupancy only but states as the tenant did not dispute the Notice within five days he should still be entitled to an Order of Possession.

The landlord seeks a Monetary Order for the \$50.00 outstanding rent plus the \$50.00 filing fee paid for this application. The landlord also seeks an Order of Possession to take effective as soon as possible.

Analysis

I have carefully considered all the evidence before me; when a landlord accepts rent from a tenant after a 10 Day Notice has been given to the tenant, the landlord must provide something in writing to the tenant to inform the tenant that this money has been accepted for use and occupancy only and does not reinstate the tenancy. The landlord agrees that he failed to do so but argues that the tenant did not dispute the 10 Day Notice within five days.

Regardless of the fact the tenant did not file an application to dispute the Notice within five days and despite the tenant still owing \$50.00 in unpaid rent; as the landlord did not inform the tenant in writing that he was accepting rent for December, 2011 for use and occupancy only and in accepting this rent it did not cancel the 10 Day Notice and does not reinstate the tenancy; the landlord has in effect reinstated the tenancy.

Consequently, as the tenancy has been reinstated the landlord is not entitled to an Order of Possession and this section of his claim is denied.

The landlord has established his reduced claim for unpaid rent of \$50.00 and is entitled to a Monetary Order to recover this amount from the tenants pursuant to s. 67 of the Act.

As the landlord has been partially successful with his claim I find he is also entitled to recover his \$50.00 filing fee from the tenant pursuant to s. 72(1) of the Act. A Monetary Order for \$100.00 has been issued to the landlord.

Conclusion

I HEREBY FIND in favor of the landlord's reduced monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$100.00. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlord application for an Order of Possession is dismissed.

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 05, 2011.

Residential Tenancy Branch