



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; and to recover the filing fee from the tenant for the cost of this application. At the outset of the hearing the landlord withdrew their application for a Monetary Order for damage to the unit as the tenant has not moved out at this time.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 02, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and her daughter appeared. The landlord's daughter acted as an interpreter for the landlord. The landlord was provided the opportunity to present 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 to recover unpaid rent?

Background and Evidence

This month to month tenancy started on or about July 01, 2011. This tenant moved into the unit after the previous tenants moved out without permission from the landlord. The landlord states the tenant also has other unknown occupants residing in the unit. The landlord did accept rent from this tenant and the other occupants living in the unit and created a tenancy agreement between the tenant and landlord. Rent for this unit is \$850.00 per month and the tenant is responsible for the gas bills. Rent is due on the first of each month. The landlord states she did not have a written tenancy agreement with this tenant and the arrangement was verbal.

The landlord testifies that the tenant failed to pay all the rent for October and owe \$420.00 and failed to pay rent for November, 2011 of \$850.00. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent of \$1,500.00 on November 24, 2011. This was served in person by the landlord. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 05, 2011. The tenant did not pay the outstanding rent or dispute the Notice within five days. The landlord testifies the tenant also failed to pay the rent for December, 2011 on the day it was due. The landlord states one of the occupants did pay \$450.00 towards the rent by a welfare cheque on December 21, 2011. The landlord states as this cheque was only received yesterday the tenant will be given a receipt for this payment today to inform the tenant that the cheque has been accepted for use and occupancy only and does not reinstate the tenancy. The total amount of outstanding rent is now \$1,670.00.

The landlord seeks a Monetary Order to recover the outstanding rent and filing fee paid for this proceeding and seeks an Order of Possession to take effect as soon as possible.

Analysis

The tenant or any of the other unknown occupants residing at the rental unit did not appear at the hearing, despite having been given a Notice of the hearing; I refer the Parties to Section 26 of the Act which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

It is therefore my decision that the landlords are entitled to recover rent arrears for October, November and December, 2011 to the sum of **\$1,670.00** pursuant to s.67 of the Act.

As the landlord has been successful in this matter, they are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the Act.

The landlords will receive a Monetary Order for the amount of **\$1,720.00**

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

The landlord has stated that there are a number of unknown occupants residing in the unit these occupants must also move from the rental unit.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,720.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant and other occupants. This order must be served on the Respondent and may be filed in the Supreme 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 22, 2011.

Residential Tenancy Branch