



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 was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord company attended the conference call hearing and provided affirmed testimony as well as evidence in advance of the hearing. However, despite being served with the Landlord Application for Dispute Resolution and notice of hearing by registered mail on November 24, 2011, the tenant did not attend. The landlord's agent provided evidence of having served the tenant by registered mail, which evidence included a copy of the Registered Mail item receipt from Canada Post containing the post-marked stamp of November 24, 2011, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

All testimony and evidence provided by the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on September 15, 2010, and the tenant still resides in the rental unit. Rent in the amount of \$1,225.00 per month is payable in advance on the 1st day of each month. On August 26, 2010 the

landlord collected a security deposit from the tenant in the amount of \$612.50 and no pet damage deposit was collected.

The landlord's agent further testified that the tenant has been in arrears of rental payments, and owes the landlord \$525.00 up to November, 2011. On November 2, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit, a copy of which was provided in advance of the hearing. The notice is dated November 2, 2011 and states that the tenant failed to pay rent in the amount of \$1,425.42 that was due on November 1, 2011. The notice also contains an expected date of vacancy of November 15, 2011. Although only one of the 2 pages of the prescribed form were provided by the landlord for this hearing, the landlord's agent testified that the second page is on the back of the 1st page, and both pages were served on the tenant.

The landlord also provided a copy of a tenant ledger which shows that the tenant was in arrears the sum of \$900.42 as at October 11, 2011, and rent for November also became due on November 1, 2011 in the amount of \$1,225.00. The tenant made a payment of \$700.00 on November 1, 2011 which brought the balance owing down to \$1,425.42. The tenant made a further payment of \$900.42 on November 15, 2011, which again decreased the balance due to \$525.00. Further, the tenant paid the landlord \$700.00 for December's rent, leaving a further balance outstanding of \$525.00, for a total due of \$1,050.00. The landlord was provided with an opportunity to fax to the Residential Tenancy Branch a copy of the receipt issued, and the landlord provided a copy of a receipt dated December 11, 2011 for December's rent payment in the amount of \$700.00 that clearly has written on it "For Occupancy Only." No receipt was provided from the landlord for the payment made on November 15, 2011.

The landlord requests an Order of Possession effective December 31, 2011 and a monetary order in the amount of \$1,050.00 plus the \$50.00 filing fee for the cost of this application, and to keep the security deposit in the amount of \$612.50 in partial satisfaction of the claim.

Analysis

In this case, I find that the landlord had cause to issue the notice to end tenancy for unpaid rent. I further find that the tenant owed \$1,425.42 after the tenant made the \$700.00 payment on November 1, 2011. Therefore, I find that the amount of rent owing as recorded on the notice to end the tenancy is correct. However, the tenant paid \$900.42 on November 15, 2011, which was the effective date of the notice to end tenancy, and I have no evidence before me that the landlord issued a receipt for use

and occupancy only after having issued a notice to end tenancy on November 2, 2011. The landlord provided a copy of a receipt that was dated December 11, 2011 which shows "For Occupancy Only," which is after this hearing concluded. Therefore, I must find that the landlord has reinstated the tenancy by collecting rent on November 15, 2011 and on December 1, 2011 and by failing to prove that the tenant has been put on notice that the intent of the landlord was to collect rental arrears only for use and occupancy. The landlord's application for an Order of Possession cannot succeed. If the rent remains unpaid, the landlord is at liberty to issue another notice to end the tenancy to the tenant. If the tenant fails to pay the rent within 5 days of service, the landlord may reapply for dispute resolution to obtain an Order of Possession.

I am satisfied in the circumstances that the tenant owes rent in the amount of \$1,050.00, to the end of December, 2011, and the landlord is entitled to a monetary order in that amount.

With respect to the landlord's application to keep the security deposit in partial satisfaction of the claim, I find that the landlord is entitled to such an order for the unpaid rent.

The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

I hereby order the landlord to keep the security deposit in the amount of \$612.50 and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$487.50.

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 14, 2011.

Residential Tenancy Branch