



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 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, and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, provided evidence in advance of the hearing, and gave affirmed testimony. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing by registered mail on November 28, 2011, the tenant did not attend. The landlord provided a copy of the receipt issued by Canada Post for the registered mail cost which contains the date of November 28, 2011 as well as a copy of the registered mail item receipt. I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided have been reviewed and are 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?

Background and Evidence

The landlord testified that this month-to-month tenancy began on October 15, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$450.00 per month is payable on the 1st day of each month, and the landlord collected a pro-rated amount for the first month of the tenancy. On or about October 13, 2011, the landlord also collected a security deposit from the tenant in the amount of \$225.00, and no pet damage deposit was collected.

The tenant failed to pay rent when it was due for the month of November, 2011, and on November 11, 2011 the landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing. The notice is dated November 11, 2011 and contains an expected date of vacancy of November 21, 2011. The landlord also provided a Proof of Service document which is signed by an agent who states that the tenant was served with a copy of the notice by posting it to the door of the rental unit on November 11, 2011.

The landlord has not collected any rent from the tenant for the months of November or December, 2011, and the landlord further testified that the rental unit will not be rentable for the month of December due to the holiday season. The landlord claims an Order of Possession and a monetary order for \$900.00 for unpaid rent. Also, the landlord has not claimed an order permitting the landlord to keep the security deposit in partial satisfaction of the claim in the application for dispute resolution, however the landlord claimed that relief during the course of the hearing.

Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due, and if the tenant fails to do so, the landlord may end the tenancy by serving the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant then has 5 days from the date of service to pay the rent in full or apply for dispute resolution, in which case the notice is of no effect. However, if the tenant does not pay the rent in full or apply for dispute resolution within that 5 day period, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and the tenant must move out of the rental unit.

In this case, I find that the tenant was deemed to have been served with the notice to end the tenancy 3 days after posting it to the door of the rental unit, or on November 14, 2011. The tenant did not pay the rent in full or apply for dispute resolution by November 19, 2011, and is therefore conclusively presumed to have accepted that the tenancy ends. However, I also find that the effective date of vacancy contained in the notice is incorrect and ought to read November 24, 2011. The *Act* also states that if a party gives notice to end a tenancy effective on a date that does not comply with the *Act*, the notice is deemed to be changed to the earliest date that complies with the *Act*, and I find that the effective date of vacancy in the notice in this case is deemed to be changed to November 24, 2011. I further find that the landlord is entitled to an Order of Possession for unpaid rent.

I further accept the testimony of the landlord that the tenant is still residing in the rental unit, and the landlord is entitled to recovery of 2 month's rent, or \$900.00, for November and December, 2011. The *Act* also states that if I order the tenant to pay any amount to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant, and I find it just in the circumstances to make such an order. Therefore, I order the landlord to keep the security deposit in the amount of \$225.00 in partial satisfaction of the claim, and I hereby grant a monetary order in favour of the landlord for the balance due of \$675.00. 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, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the security deposit in the amount of \$225.00 and I grant a monetary order in favour of the landlord for the balance due of \$725.00.

This order is final and binding on the parties and may be enforced.

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 13, 2011.

Residential Tenancy Branch