



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR; MNR; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent that was due on October 20, 2011?

Background and Evidence

This application is for an Order of Possession based on a Notice to End Tenancy for Unpaid rent issued November 3, 2011 (the "Notice"), in the amount of \$650.00 that was due on October 20, 2011. A copy of the Notice was provided in evidence.

Monthly rent is \$650.00, due on the 20th day of each month. Both parties testified that the Landlord collected the rent at the rental unit on the 20th of each month. The Tenant testified that the Landlord did not come to collect the rent on October 20, 2011. The Landlord testified that she didn't collect the rent because she thought the Tenant was moving out of the rental unit on November 1, 2011.

The parties testified that the Landlord had issued a two month notice to end the tenancy for landlord's use on August 30, 2011, and that they had agreed that the Tenant didn't have to pay rent on October 20, 2011, in compensation pursuant to the provisions of Section 51 of the Act. The Landlord stated that the Tenant was supposed to vacate the rental unit on November 1, 2011, and that the Landlord issued the Notice on November 3, 2011, because the Tenant had not moved out.

Analysis

Based on the testimony of both parties, I find that the notice to end tenancy for landlord's use was effective on November 20, 2011, and not on November 1, 2011.

The Landlord issued a notice to end tenancy for landlord's use and therefore must provide the Tenant with the equivalent of one month's rent, pursuant to the provisions of Section 51(1) of the Act. Pursuant to the provisions of Section 51(2) of the Act, the Tenant may withhold that amount from last month's rent. Therefore, I find that the Tenant did not owe rent on October 20, 2011, and the Notice is not a valid notice. The Landlord's application for an Order of Possession based on the Notice is dismissed.

The Tenant did not owe any rent on October 20, 2011, and therefore the Landlord's application for a Monetary Order for unpaid rent is dismissed.

The Landlord was not successful in her application and therefore her application to recover the cost of the filing fee from the Tenant is dismissed.

The Tenant gave a new address for service at the Hearing.

Conclusion

The Landlord's application is dismissed in its entirety.

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 06, 2011.

Residential Tenancy Branch