



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Preliminary Issues

The Landlord confirmed the Tenant is still occupying the unit and she wishes to withdraw her request for an Order of Possession for cause and for breach of a material term as she wants to proceed with her request for an Order of Possession for unpaid rent and a monetary order for unpaid rent.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done via registered mail November 23, 2011. Mail receipt numbers were provided in the Landlord's testimony. Based on the submission of the Landlord I accept that the Tenant has been served notice of this proceeding.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant despite him being served notice of this hearing in accordance with the Act

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach, pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord affirmed that they entered into a written tenancy agreement that began on July 1, 2009 and switched to a month to month tenancy after July 30, 2010. Rent is payable on the first of each month in the amount of \$795.00 and on June 30, 2009 the Tenant paid \$400.00 as the security deposit.

The Landlord advised that when the Tenant failed to pay the November 2011 rent a 10 Day Notice to End Tenancy was served to the Tenant on November 8, 2011 when it was placed through the mail slot on his door. She wishes to obtain an Order of Possession for as soon as possible.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

Order of Possession - I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenant failed to pay the rent within 5 days after receiving this notice, and that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for the total unpaid rent of \$1,590.00 comprised of \$795.00 for November 2011 and \$795.00 for December 2011; pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due.

Based on the aforementioned I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore I award the Landlord **\$1,590.00** for unpaid rent.

The Landlord has partially succeeded with her application; therefore I award recovery of the **\$50.00** filing fee.

All deposits currently held by the Landlord must be disbursed in accordance with section 38 of the Act.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,640.00** (\$1,590.00 + 50.00). This Order is legally binding and must be served upon the Tenant.

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 08, 2011.

Residential Tenancy Branch