



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

There was no dispute that the tenant's rent was set at \$995.00 per month and that at the beginning of December, she had a \$5.00 credit to her account. There was also no dispute that the tenant failed to pay the balance of \$990.00 owing for the month of December.

The landlord testified that she posted the notice to end tenancy on the tenant's door on December 3, 2011. When I asked the tenant if she had received the notice to end tenancy on December 3, she stated that she "received it much later" but was unsure as to the exact date. Later in the hearing she stated that she could not recall having received the notice at all. She testified that when the landlord's agent came to collect rent, she advised the agent that she would not be paying rent because certain repairs had not been completed.

The parties agreed that as of the date of the hearing, the tenant had not made any further payments.

The landlord seeks an order of possession and a monetary order for unpaid rent, loss of income and late payment charges pursuant to the terms of the tenancy agreement.

Analysis

Section 26(1) of the Act provides that a tenant must pay rent when it is due regardless of whether the landlord has complied with the Act or the agreement. While the landlord may not have performed repairs, and I make no finding on that issue, I find that the tenant did not have the right to withhold rent.

Given the tenant's inconsistent testimony on the issue of receipt of the notice to end tenancy, I find it more likely than not that she did receive the notice at some time in the first half of December. She did not pay the arrears or file for dispute resolution to dispute the notice and I find that pursuant to section 46(5) she is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I grant the landlord an order of possession which must be served on the tenant. If the tenant fails to comply with the order, it may be filed in the Supreme Court for enforcement.

I find that the landlord is entitled to recover the unpaid rent for the month of December and loss of income for the month of January. I award the landlord \$1,985.00. I also award the landlord \$20.00 for a late payment fee for the month of December. I dismiss the claim for a late payment fee for the month of January. The tenancy ended on the effective date of the notice and with it ended the contractual obligation to pay rent. The landlord had also applied for loss of income for February. I dismiss that claim with leave to reapply in the event the tenant does not comply with the order of possession and causes the landlord to lose income for that month.

As the landlord has been substantially successful, I find that she should recover the filing fee and I award her \$50.00. I grant the landlord a monetary order under section 67 for \$2,055.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is awarded \$2,055.00 and is granted an order of possession.

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: January 16, 2012

Residential Tenancy Branch