



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation for loss – Section 67;
4. An Order to retain all or part of the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by personal service in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on November 15, 2011. Rent in the amount of \$940.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$470.00. The Tenant’s

cheque for November rent and the security deposit was returned N.S.F and the Tenant failed to pay rent for the month of December 2011. On December 8, 2011 the Landlord personally served the Tenant with a notice to end tenancy for non-payment of rent. On January 4, 2011, the Tenant returned the keys to the unit and moved out of the unit. The Tenant did not file an Application for Dispute Resolution. The Landlord claims unpaid rent for November and December 2011 and January 2011.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's testimony I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice. The Tenant is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. As the Tenant has vacated the unit, the Landlord no longer requires an Order of Possession and I dismiss this part of the Landlord's claim.

Section 44 of the Act sets out when a tenancy will end. Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended pursuant to section 44. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. The Landlord in this case elected to end the tenancy agreement for non-payment of rent by serving a 10 day notice to end tenancy with a move-out date of December 18, 2011 and the Tenant remained in the unit until January 4, 2012. As such, the Tenant is liable for rent to that date. The per diem rate for rent is \$31.33 (\$940.00/30 x 4). I find therefore

that the Landlord is entitled to the amount of **\$470.00** for November 2011 rent, **\$940.00** for December 2011 rent and the per diem amount of **\$125.32** for the period January 1 to 4, 2012. The Landlord is also entitled to recovery of the **\$50.00** filing fee, for a total entitlement of **\$1,585.32**.

Conclusion

I grant the Landlord an order under Section 67 of the Act for the amount of **\$1,585.32**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 09, 2012.

Residential Tenancy Branch