



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, and a monetary order for unpaid rent and the filing fee.

The Landlord provided affirmed testimony that he served the Tenant, in person with the Application for Dispute Resolution and Notice of Hearing on December 24, 2011 when they met at a coffee shop near the rental unit. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (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.

Preliminary Matter(s)

The Landlord has applied for unpaid rent from July 2011 to December 2011 in the amount of \$9,000.00. At the Hearing the Landlord explained that the Tenant did not comply with the 10 Day Notice to End Tenancy, which was served on him on December 16, 2011. The Landlord stated that the Tenant has not moved out of in the rental unit and has not paid rent as stated on the Notice and the Landlord received no rental income for January 2012.

I find that the Tenant is aware that rent for January 2012 is also outstanding, and he has still not vacated the rental unit as of January 01, 2012. As result I find it appropriate to allow the Landlord to amend their Application to request the loss of rental income for January 2012.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession and a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy agreement states that the tenancy commenced on July 02, 2010 and rent is due on the first day of the month in the amount of \$1,450.00. The Landlord stated that the Tenant paid a security deposit of \$725.00 when the tenancy commenced. The Landlord stated that the rent is currently \$1,500.00, however no proof of a rent increase Notice was provided in the Landlord's evidence.

The Landlord testified that the Tenant has failed to pay the rent since July 2011 and has made numerous promises to the Landlord that he will receive the money as soon as the Tenant gets it from his family. The Landlord stated that he meets the Tenant regularly at a coffee shop near the rental unit two to three times per month and that each time the Tenant has promised to pay the outstanding rent. The Landlord testified that he served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent in person on December 16, 2011 at a coffee shop near the rental unit.

The Landlord provided copies of two written statements in Korean signed by the Tenant, which he stated are the Tenants written promises to pay him the outstanding money owed for rent. The Landlord stated that the copy of the written statement dated December 17, 2011 is the Tenant's agreement that he owes the Landlord \$9000.00 and that he will pay it as soon as possible.

The Landlord stated that the Tenant did not pay the outstanding rent within five days. The Landlord stated that he applied for Dispute Resolution on December 22, 2011 as a result. The Landlord stated that he served the Tenant, in person with the Application for Dispute Resolution and Notice of Hearing on December 24, 2011.

The Landlord stated that the Tenant did not move out of the rental unit within 10 days of receiving the Notice and is still in the rental unit at the time of the hearing. The Landlord stated that the Tenant has also not paid his rent for January 2012.

The Landlord is requesting an order of possession. The Landlord requests a monetary order for \$9,000.00 as stated on the Notice to End Tenancy, which he stated represents the outstanding rent from July 2011 to December 2011. The Landlord is also requesting unpaid rent for January 2012 in the amount of \$1,500.00, as the Tenant has not vacated the rental unit and is aware the rent is due.

The Landlord has also applied for reimbursement of the \$100.00 filing fee for this proceeding.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's evidence that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on December 16, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was personally served on the Tenant on December 16, 2011, it was deemed to have been served the same day. The Notice states that the Tenant had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end from the service date. The Tenant did not pay the outstanding rent and did not apply to dispute the Notice to End Tenancy within five days from the date of service. The deadline to do so was December 21, 2011. The Notice indicates that the Tenant had 10 days to vacate the premises, based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline. The Landlord did not correctly calculate the 10 days on the Notice, so I find that the 10th day on which the Tenant should have vacated the rental unit is December 26, 2011. I find that rent was not paid within five days and the Tenant did not file an Application to dispute the Notice.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on December 26, 2011, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement submitted into evidence by the Landlord states that rent is due on the first of the month. I find that the Tenant failed to pay outstanding rent of \$9,000.00 owing from the period July 2011 to December 2011, and did not vacate the rental unit within 10 days of service of the Notice. The Tenant did not file an Application to dispute this Notice and I accept the Landlord's testimony about the written document signed by the Tenant on December 17, 2010. I find that the Tenant owes \$9,000.00 to the Landlord in unpaid rent as stated on the Notice to End Tenancy.

I find that the Landlord did not receive rental income for the month of January 2012 for the rental unit and that the Tenant is aware that he is in arrears for the rent for January. Although the Landlord has stated that the rent is currently \$1,500.00 per month, I found no evidence of a rent increase Notice in the Landlord's documented evidence. The tenancy agreement signed by the parties indicates that the monthly rent is \$1,450.00. I find that the Landlord is only entitled to claim \$1,450.00 for the month of January, as he did not provide evidence to support a rent increase.

I find that the Landlord has established a monetary claim of \$10,450.00, comprised of rent owing for July 2011 to December 2011 (\$9,000.00 as stated on the Notice) and rental income lost for January 2012 (\$1,450.00).

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$100.00 fee for this proceeding. I have added this amount to the monetary order against the Tenant bringing the total amount owing to \$10,550.00.

I order that the Landlord retain the security deposit (\$725.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$9,825.00**.

Conclusion

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant and may be filed in the Supreme Court.

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$9,825.00**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The orders accompany the Landlord's copy of this decision.

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 12, 2012.

Residential Tenancy Branch