



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MND, MNR, FF

Introduction

This hearing was originally scheduled for January 3, 2012 at 3:00 p.m. to deal with the landlord's application for an Order of Possession for unpaid rent and cause as well as a monetary claim for unpaid rent and damage to the property. Both parties appeared at the January 3, 2012 hearing; however, at the commencement of the hearing the tenant stated his son was being flown to the hospital after being involved in a car accident and that he could not participate in the hearing. The tenant hung up and the landlord consented to an adjournment. The hearing was adjourned to January 10, 2012 at 3:00 p.m. and both parties were sent Notices of Adjourned Hearing by mail by the Residential Tenancy Branch. The Branch also telephoned both parties to provide them with the adjourned hearing information.

The landlord appeared but the tenant did not appear at the hearing of January 10, 2012. The landlord testified that he also posted a copy of the Notice of Adjourned Hearing on the tenant's door. I proceeded to hear from the landlord in the tenant's absence.

The landlord testified that the tenant was served with the landlord's application and evidence via registered mail sent to the tenant at the rental unit on December 14, 2011. The landlord provided registered mail receipts and tracking numbers as proof of service and testified the registered mail has not been returned to him.

The landlord had identified two co-tenants in making this application; however, the landlord testified that the female tenant moved out of the rental unit November 11, 2011.

Considering all of the above, I found the male tenant has been sufficiently notified of the landlord's application and this proceeding; however, the female tenant has not been sufficiently served as she no longer resides at the rental unit. Therefore, the application was amended to name the male tenant only.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to compensation for unpaid rent for October, November and December 2011?
3. Is the landlord entitled to compensation for damage to the rental unit?

Background and Evidence

The tenancy commenced June 22, 2011 for a monthly rent of \$900.00. The landlord collected a \$450.00 security deposit. The tenancy agreement provides that rent of \$900.00 is payable on the last day of every month; however, the landlord had been accepting rent on the 1st day of every month. The tenants did not pay rent for the months of October, November or December 2011. On December 2, 2011 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) and sent it to the tenants via registered mail on December 2, 2011. The landlord provided registered mail tracking numbers as proof of service and testified the registered mail was successfully delivered.

The Notice indicates rent of \$2,700.00 was outstanding of December 1, 2011. The landlord testified the tenant did not pay the outstanding rent and continues to occupy the rental unit. The tenant did not file to dispute the Notice.

As the tenant continues to occupy the rental unit I did not hear from the landlord with respect to damage to the unit. Rather, the landlord was informed of his right to make a future application once the tenant has vacated and damages are determined.

The landlord requested that I amend the application to permit him to retain the security deposit in partial satisfaction of the rent owed. As I found this request non-prejudicial to the tenant I accepted the request for amendment.

Documentary evidence provided for this hearing included: the tenancy agreement; the 10 Day Notice; Proof of Service of the 10 Day Notice; and registered mail receipts.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant

is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy has ended and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

As the tenancy has ended for unpaid rent I have not given any further consideration to the landlord's request that this tenancy end for cause.

I find the landlord entitled to recover unpaid rent for the months of October 2011 through December 2011 as claimed. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application. Accordingly, the landlord is provided a Monetary Order calculated as follows:

Unpaid rent: October – December 2011	\$ 2,700.00
Filing fee	50.00
Less: security deposit	<u>(450.00)</u>
Monetary Order	\$ 2,300.00

To enforce the Monetary Order is must be served upon the tenant and may be filed in Provincial Court (Small Claims) as necessary.

Conclusion

The tenancy has ended for unpaid rent and the landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,300.00 to serve 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: January 10, 2012.

Residential Tenancy Branch