



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and Monetary Order for unpaid rent. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The tenancy commenced October 1, 2011 and the tenant is required to pay rent of \$975.00 on the 1st day of every month. On December 1, 2011 the landlord issued and personally served a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) upon the tenant. The Notice indicates \$975.00 in rent was outstanding as of December 1, 2011.

The tenant submitted that her roommate had given the landlord \$375.00 at the end of November 2011 and acknowledged \$600.00 was still owed for December 2011. The landlord agreed \$600.00 is still owed for December 2011.

Both parties agreed that \$600.00 in rent is outstanding for January 2012.

Provided as evidence for this proceeding were copies of the Notice and a written tenancy agreement signed by the landlord but unsigned by the tenant.

Analysis

Although the tenancy agreement was unsigned by the tenant, the Act applies to all residential tenancy agreements, including oral tenancy agreements, unless specifically excluded by the Act. I find the Act applies to this tenancy.

Section 46 of the Act provides that a landlord may issue a Notice to End Tenancy for unpaid rent “on any day after the day it is due”. Since the tenant is required to pay rent on the 1st day of the month in this case, the earliest the landlord could have issued a Notice to End Tenancy for December’s unpaid rent was December 2, 2011.

On December 1, 2011 the rent for December 2011 was not yet unpaid or late. Accordingly, issuing a Notice on that date is non-compliant with the requirements of the Act and the Notice issued December 1, 2011 is invalid and unenforceable.

In light of the above, I decline the landlord’s request for an Order of Possession. However, the landlord remains at liberty to issue another Notice to End Tenancy for unpaid rent if rent remains outstanding.

As it is undisputed the tenant still owes the landlord rent of \$1,200.00 as of the date of this hearing I provide the landlord with a Monetary Order in this amount. Should the tenant not pay the outstanding rent for December 2011 and January 2012 the landlord may serve the Monetary Order upon her and enforce as necessary in Provincial Court (Small Claims).

Conclusion

The landlord’s request for an Order of Possession was denied as the 10 Day Notice was invalid. The landlord has been provided a Monetary Order in the amount of \$1,200.00 to serve upon the tenant in the event she does not pay the outstanding rent for December 2011 and January 2012.

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 18, 2012.

Residential Tenancy Branch