



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other. The landlord provided documentary evidence to the Residential Tenancy Branch and to the tenant in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this tenancy started on July 02, 2011. Rent for this unit is \$800.00 per month. Rent is due on the first of each month. The tenant paid a security deposit of \$400.00 on July 04, 2011.

The landlord testifies that the tenant owes a balance of rent for September, 2011 of \$240.00. The tenant failed to pay rent for October, 2011 of \$800.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on October 07, 2011. This was handed to the tenant in person. This Notice states that the tenant owes rent of \$800.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on October 17, 2011. The tenant did not pay the outstanding rent and has since failed to pay rent for November, 2011. The landlord seeks to amend his application to include unpaid rent for November. The total amount of outstanding rent is now \$1,840.00.

The landlord testifies that part of the tenants rent was paid by the Ministry. He states the Ministry contacted him in late October and said they would pay all of the October rent arrears if the landlord would allow the tenant to remain in the rental unit. The landlord testifies as he did not wish to reinstate the tenancy he declined to accept this offer from the Ministry.

The landlord testifies the tenant has caused some damage to the rental unit. At this point the landlord states he only has invoices for the damaged window screen of \$28.00 and a damaged blind for \$77.28. The landlord seeks to recover these amounts from the tenant. The landlord states there is also damage to the door weather strip, the metal sheet on the door and oil stains on the driveway however he has not been able to get these items repaired yet so cannot put a monetary figure on this work..

The landlord has applied to retain the tenants' security deposit of \$400.00 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible and seeks to recover the \$50.00 filing fee from the tenant.

The tenant does not dispute that she owes rent for September, October and November 2011 to the sum of \$1,840.00. However the tenant states the landlord refused to take the rent for October when the ministry offered to pay it.

The tenant does not dispute that the window screen and window blind were damaged. The tenant states she has repaired the weather strip and intends to repair the metal sheet on the door and remove the oil stains from the driveway before the end of the tenancy.

Analysis

Section 26 of the Act states: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the tenant failed to pay all the rent due for September, 2011. I also find the tenant has failed to pay the rent for October and November. Rent is the responsibility of the tenant and she must ensure it is paid on the day it is due. As the tenant failed to do so and failed to pay rent within the five days allowed on the 10 Day Notice the landlord is within his rights not to accept the offer from the Ministry to pay the outstanding rent if he would reinstate the tenancy. I further find the landlord is entitled to recover unpaid rent for November, 2011 as the tenant has remain living at the rental unit during November and would have been aware that rent was due on the first day of the month.

Consequently the landlord is entitled to recover the sum of **\$1,840.00** and is entitled to a Monetary Order to recover these arrears pursuant to s.67 of the *Act*.

With regard to the landlords claim for damages of \$105.28 the tenant does not dispute that these damages were caused by her actions or neglect or the actions or neglect of a person permitted on the property by the tenant. Consequently the landlord is entitled to recover the sum of **\$105.28** for damage to the window screen and blinds and will receive a Monetary Order pursuant to s. 67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$400.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent	\$1,840.00
damages	\$105.28
Subtotal	\$1,945.28
Less Security Deposit	(-\$400.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$1,595.28

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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 the effective date of the Notice and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,595.28**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme 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: November 08, 2011.

Residential Tenancy Branch