



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 dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent, damage or loss under the Act, the filing fee and an order to keep the security deposit.

The Landlord provided affirmed testimony that he served the Tenant by registered mail on January 20, 2012. The Landlord provided a copy of the registered mail tracking number and Canada Post receipt into evidence. 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 stated that they have reviewed their records and the Tenant did not pay a security deposit, as well, there are no damages they are seeking at this time as the Tenant has not moved out of the rental unit yet. The Landlord confirmed that they are only seeking an order of possession, a monetary order for the unpaid rent, and the filing fee in this Application.

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 August 01, 1991 and rent is due on the first day of the month. The Landlord submitted into evidence a rental subsidy letter that states the Tenant's current monthly rent is \$350.00. The Landlord testified that the Tenant has failed to pay the rent since December 2011. The Landlord testified that the Tenant was with the 10 Day Notice to End Tenancy for

Unpaid Rent on January 05, 2012 when it was posted on the door of the rental unit. The Landlord stated the Tenant neglected to pay \$350.00 rent for December 2011 and \$350.00 rent for January 2012.

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 January 19, 2012 as a result.

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 is requesting an order of possession.

The Landlord requests a monetary order for the unpaid rent for December and January, and the filing fee.

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 January 05, 2012 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was posted on the door of the rental unit on January 05, 2012, it was deemed to have been served by January 08, 2012 (three days). 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 January 13, 2012. 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 January 18, 2012. 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 January 18, 2012, 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 \$700.00 (\$350.00 December 2011 + \$350.00 January 2012), 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.

The Landlord provided a copy of their accounting ledger which indicates the Landlord may have been intending to charge late fees to the Tenant for unpaid rent. The Landlord failed to provide any testimony regarding late fees and did not request this at the hearing. The 10 Day Notice issued to the Tenant indicates that \$750.00 is owed to the Landlord for unpaid rent, however I do not agree as the evidence and testimony of the Landlord only support that \$700.00 is owed for unpaid rent. I find that the Tenant owes \$700.00 to the Landlord in unpaid rent.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenant bringing the total amount owing to \$750.00.

I grant the Landlord an order under section 67 for **\$750.00**.

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 is entitled to a monetary order for the unpaid rent, for December 2011 and January 2012, and filing fee in the amount of **\$750.00**. 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: February 07, 2012.

Residential Tenancy Branch