



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

The Landlord and the Landlord's witness BM, were assisted at the hearing by JL, who also translated questions and testimony into English from their Chinese dialect as needed during the hearing.

The Landlord provided affirmed testimony that she personally served the Tenant at the rental unit with the Application for Dispute Resolution and Notice of Hearing package on February 01, 2012, and provided a witness to the service. The Landlord's witness BM attended the hearing and provided affirmed testimony that he was present at 9:00 A.M. on February 01, 2012 when the Application and Notice of Hearing package was served on the Tenant.

I find that the Tenant was served the Application and Notice of Hearing in accordance with section 89 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 made an oral request at the hearing to amend the Application to include rental income loss as of February 15, 2012 in the amount of \$680.00 as the Tenant remained in the rental unit and failed to pay rent. The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy on January 24, 2012 stating that \$1360.00 in outstanding rent was owed. The Landlord testified that the Tenant did not comply with the Notice as he failed to pay the full amount of outstanding rent for December and January, as he only paid \$400.00 on January 27, 2012. The Landlord stated that the Tenant did not move out of the rental unit within 10 days as required by the Notice.

Pursuant to section 64(3) of the Act I am granting the Landlord's request to amend the Application to include the rental income loss for February 2012 as it is reasonable to do so. The Tenant is aware that rent for February 2012 is due, and he has remained in the rental unit.

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, rental income loss and recovery of the filing fee?

Background and Evidence

The Landlord testified that the tenancy agreement was verbal and commenced on August 15, 2010, and rent is due on the fifteenth day of the month in the amount of \$680.00. The Landlord stated that the Tenant paid the Landlord a security deposit of \$340.00 when the tenancy commenced. The Landlord stated that the Tenant resides in a self contained suite which has its own kitchen and bathroom in the upstairs of her house, which is not shared with the Landlord.

Based on the testimony of the Landlord, the 10 Day Notice to End Tenancy for Unpaid Rent was personally delivered to the Tenant on January 24, 2012. This Notice informed the Tenant that the Notice would be cancelled if \$1,360.00 in outstanding rent was paid within five days. The Notice provided into evidence by the Landlord indicates that the Landlord wanted the Tenant to vacate on January 24, 2012, however, the Act provides 10 days to a Tenant to vacate for non-payment of rent as indicate in the provisions of the Act stated in the Notice. This Notice also explains the Tenant had five days to dispute the Notice. The Landlord testified that the Tenant paid the Landlord \$400.00 on January 27, 2012 towards the outstanding rent and made verbal promises to try and pay the rest. The Tenant has made no further rent payments and he owes rent in the amount of \$960.00 for December 2011 (\$280.00) and January 2012 (\$680.00). The full amount of the outstanding rent was not paid within five days of service of the Notice and the Tenant did not file an Application to dispute the Notice.

The Landlord filed an Application for Dispute Resolution on January 31, 2012. The Landlord testified that after she personally served the Tenant with the Application and Notice of Hearing package on February 01, 2012 the Tenant told her that he knew the law better than her and he was not moving out and not paying rent. The Landlord testified that she noticed a minor spelling error with a letter "n" instead of the letter "m" in the middle of the Tenant's last name on the Notice she had served on the Tenant on February 01, 2012. The Landlord stated that she advised our office of our spelling error on February 06, 2012 and a hearing notice was done with the revised spelling. The Landlord stated that she reminded the Tenant of the hearing the day before and that he should call in as indicated on the Notice of Hearing she had provided to him on February 01, 2012. The Landlord testified that the Tenant did not vacate the rental unit

within 10 days and that he is still in the rental unit at the time of this hearing (February 17, 2012).

The Landlord testified that because the Tenant has not moved out of the rental unit she has rental income loss of \$680.00 rent for February 2012. The Landlord requests an order for the outstanding rent \$960.00 and the rental income loss \$680.00, as well as an order of possession of the rental unit.

The Landlord has also applied for reimbursement of the \$50.00 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 January 24, 2012 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was personally served on the Tenant at the rental unit on January 24, 2012, 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 full amount of 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 29, 2012. The Landlord indicated on the Notice that the Tenant had until January 24, 2012 to vacate the premises, however this date corrects to February 03, 2012 (10 days from the deemed service date) pursuant to the service provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days, the Tenant did not file an Application to dispute the Notice, and the Tenant is still in the rental unit as of the date of this hearing.

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 February 03, 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 is that rent is due on the fifteenth of each month. I find that the Tenant failed to pay the outstanding rent for December 2012 (\$280.00) and January 2012 (\$680.00), for a total amount of \$960.00 in rent owed.

As the Tenant did not vacate the rental unit in accordance with the Notice and is still in the rental unit at the time of this hearing (February 17, 2012), I find that the Landlord is

entitled to rental income loss of \$680.00 for February 2012 as she was not been able to rent out the rental unit for February, and the Tenant has not paid rent.

I find that the Landlord has established a monetary claim of \$1,640.00, comprised of rent owing for December 2011 (\$280.00), January 2012 (\$680.00), and rental income loss for February 2012 (\$680.00).

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 \$1,690.00.

I order that the Landlord retain the security deposit (\$340.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,350.00.**

Conclusion

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant.

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 **\$1,350.00.**

The orders accompany the Landlord's copy of this decision. The orders must be served on the Tenant and may be filed in the Supreme 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: February 17, 2012.

Residential Tenancy Branch