



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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, the filing fee, and an order to keep the security deposit.

The Landlord provided affirmed testimony that they served the Tenant, ND, in person on January 30, 2012 with the Application for Dispute Resolution and Notice of Hearing.

Tenant ND provided affirmed testimony at the hearing confirming the Landlord's testimony regarding service of the Application and Notice of Hearing.

I find that the Tenant, ND, was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

LC attended the hearing and provided affirmed testimony that she had received a phone call from the parties telling her to attend the hearing and was provided with the access code and information by phone, however she stated that she has not been served with the Application or any Notices.

All parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

On the Landlord's Application they have listed two individuals as tenants, LC and ND. The Landlord stated that he had a verbal tenancy with LC and ND as of July 01, 2010 when they moved into the two bedroom rental unit. The Landlord stated that LC informed him by phone that she moved out of the rental unit in November 2011, and did not provide a forwarding address; as a result he has not served her with the Application. The Landlord stated that the other Tenant NC, who is LC's former boyfriend stayed on in the rental unit. Based on the Landlord's undisputed testimony, I find that ND is a tenant as defined by the Act effective July 01, 2010, under a verbal tenancy agreement with the Landlord.

The Landlord stated that they have only served the Tenant, ND, with the Application. As a result, I will only be naming Tenant ND on any orders that may result from this decision.

Issue(s) to be Decided

Has Tenant ND breached the Act or tenancy agreement, entitling the Landlord to an order of possession, a monetary order for unpaid rent, the filing fee, and an order to keep the security deposit?

Background and Evidence

The Landlord testified that the co-tenant, LC, informed him by phone in November and later in writing, on February 03, 2012, that she had moved out of the rental unit as of November 14, 2011, and that the other Tenant ND, her former boyfriend, was staying on in the rental unit. The co-tenant LC did not provide a forwarding address. The Landlord stated that Tenant ND confirmed that he would be living in the rental unit and paying the rent. Tenant ND stated that the Landlord and LC have called the RCMP on him and tried to get him to leave. ND stated that he has been a Tenant in the rental unit since July 2010, he has rights, he is not leaving, and he would like to make an arrangement to pay off the outstanding rent.

The parties agree that a verbal month to month tenancy between the Landlord and LC and Tenant ND, commenced July 01, 2010 for a two bedroom rental unit with a monthly rent of \$850.00 due on the first of each month. The parties agree that LC had previously resided in a bachelor suite in the building and her security deposit of \$237.50 transferred over to the new tenancy. The Landlord stated that rent was in arrears by \$30.00 for October 2011, and as of November 2011 no further rent was received. The parties agree that LC moved out of the rental unit on November 14, 2011 and Tenant ND remained in the rental unit.

The Landlord stated that he issued a 10 Day Notice to end the tenancy for non payment of rent on November 23, 2011 and December 03, 2011 only naming LC. The Landlord stated that as only Tenant ND was residing in the rental unit at that time, he then issued a 10 Day Notice to End Tenancy naming Tenant ND and LC by serving it at the rental unit on December 11, 2011 to Tenant ND in person. The 10 Day Notice to End Tenancy stated that the rent arrears were \$1,730.00 as of December 01, 2011.

ND stated that the Notices issued on November 23 and December 03, 2011 were of no effect as he had not been named on either Notice, and LC no longer lived in the rental unit so proper service of those Notices was not done. Tenant ND stated that he was personally served with the Notice on December 11, 2011 which has his name on it as a tenant. Tenant ND states that he did not file an application to dispute the Notice, but did try to pay some rent to the Landlord instalments, but the Landlord refused to accept it.

The Landlord testified that the Tenant made no attempts to pay the outstanding rent and did not pay the outstanding rent or move out within 10 days of the Notice being served.

The Landlord stated that the rent has been outstanding since October 2011, and that the Tenant has failed to pay any rent since that time. The Landlord stated that he is owed rent as follows: October 2011 (\$30.00), November 2011 (\$850.00), December 2011 (\$850.00). The Landlord stated he received no rental income for January or February 2012 as the Tenant has failed to move out or pay rent, as a result he is claiming rental income lost for January 2012 (\$850.00) and February 2012 (\$850.00) as he has not been able to rent out the unit. The Landlord notified the Tenant that he would be claiming for \$3,430.00, in unpaid rent and rental income loss for January 2012 and February 2012, in his Application filed on January 30, 2012.

The Tenant stated that he agrees that \$3,430.00 is owing to the Landlord, however he stated that he tried to pay the Landlord \$500.00 at the end of December and \$1000.00 on January 15, 2012 to begin to clear up the debt, however, the Landlord refused to accept payment. The Tenant confirmed that he is still residing in the rental unit at this time.

The Landlord requests an order of possession and a monetary order of \$3,430.00 for rent owing for October 2011 (\$30.00), November 2011 (\$850.00), December 2011 (\$850.00), and rental income lost for January 2012 (\$850.00) and February 2012 (\$850.00).

The Landlord's Application requests to keep the security deposit (\$237.50) from this tenancy in partial satisfaction of the claim.

The Landlord has also applied for the Application filing fee of \$50.00.

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 ND was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on December 11, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was personally served on the Tenant on December 11, 2011, 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 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 December 16, 2011. The Landlord indicated on the Notice that the Tenant had 10 days to vacate the premises, which is December 21, 2011 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 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 December 21, 2011, 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 first of each month. I find that the Tenant failed to pay the rent for for October 2011 (\$30.00), November 2011 (\$850.00), and December 2011 (\$850.00).

As the Tenant remained in the rental unit after receiving the Notice to End Tenancy for Unpaid Rent and is still in the rental unit at the time of this hearing, I find that the Landlord is entitled to the rental income loss for January and February 2012 as the Landlord not been able to rent out the rental unit.

I find that the Landlord has established a monetary claim of \$3,430.00, comprised of rent owing for October 2011 (\$30.00), November 2011 (\$850.00), December 2011 (\$850.00), and rental income lost for January 2012 (\$850.00) and February 2012 (\$850.00).

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 \$3,480.00.

The Landlord's Application requests to keep the security deposit in partial satisfaction of the claim. The Landlord holds the security deposit of \$237.50 from this tenancy. I order that the Landlord retain the full amount of the security deposit in partial satisfaction of the claim. I grant the Landlord an order under section 67 for the balance due of **\$3,242.50**.

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 ND and may be filed in the Supreme Court. The order of possession requires that the Tenant ND and all occupants, guests, or other persons vacate the rental unit.

As I have ordered that the Landlord retain the security deposit (\$237.50), I find that the Landlord is entitled to monetary Order for the balance owing pursuant to section 67 against the Tenant ND in the amount for **\$3,242.50**, for the unpaid rent, rental income loss, and the filing fee. This order must be served on the Tenant ND 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 20, 2012.

Residential Tenancy Branch