



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 was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 03, 2012. Mail receipt numbers were provided by the landlord in evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

The landlord has named two tenants on the application however only one of these tenants is named on the tenancy agreement. The landlord testifies that TP is the father of the tenant and is residing in the rental unit. As TP is not a named tenant on the

tenancy agreement he is not considered to be a tenant and therefore has no rights or obligations under the tenancy agreement this party will not be named on any Orders issued to the landlord.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

This month to month tenancy started on July 15, 2011. Rent for this unit is \$1,200.00 per month and is due on the 15th day of each month in advance.

The landlord testifies that the tenant failed to pay rent that was due on the 15th day of October, November, December, 2011 and January, 2012. The landlord testifies that the tenant now owes the sum of \$4,800.00 in unpaid rent. The landlord has provided previous 10 Day Notices issued to the tenant for November and December, 2011. The landlord issued another 10 Day Notice to End Tenancy on January 17, 2012. This Notice informs the tenant that the tenant has five days to either pay the outstanding rent or dispute the Notice or the tenancy will end on January 28, 2012.

The landlord testifies that since issuing the 10 Day Notice the tenant has not paid any rent. The landlord seeks an Order of Possession effective as soon as possible and a Monetary Order to recover the unpaid rent and filing fee.

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.

The landlord has established that rent is due on the 15th day of each month and the landlord has established that the tenant has failed to pay rent since October 15, 2011 to January 15, 2012. Consequently, I find that the landlord is entitled to recover rent arrears of **\$4,800.00** pursuant to s. 67 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *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 pursuant to section 55 of the *Act*.

As the landlord has been successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$4,850.00**. 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 landlord 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: February 24, 2012.

Residential Tenancy Branch