

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

This is an application filed by the Landlord for an order of possession and a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Landlord has submitted as evidence a copy of the 10 day notice to end tenancy for unpaid rent dated February 4, 2012 and an attached proof of service document which states that the notice was posted on the rental unit door with another Tenant as a witness. The Tenant has not submitted any evidence.

The Tenant states that she only just picked up the notice of hearing and evidence package on March 2, 2012 at the local Canada Post Outlet after picking up a notice from Canada Post in her mail box at the rental building around the middle of February. The Tenant states that she gave written notice to the Landlord sometime in late December that she would be vacating the rental unit on February 1, 2012. The Landlord disputes this stating that if notice had been received, that why didn't the Tenant return the keys. The Tenant states that she has a witness for the notice to vacate given to the Landlord. The Tenant does not have any documentary evidence. The Tenant's witness, J.Y. stated that she witnesses the Tenant leave a note for the Landlord regarding complaints of non-action regarding repairs to the rental unit. The witness stated that the Tenant explained in the note that if her repair issues were not dealt with that the tenancy would end. The witness was unsure if this was around mid November or December. The Landlord states that he sent the notice of hearing and evidence package by registered mail on February 16, 2012. The Landlord confirms that he saw the Tenant sometime in mid-February attend the witness's home, then collect mail from the mailbox. The Landlord states that the witness, J.Y. is also a Tenant of the rental property. Both parties agreed that no keys have been returned to the Landlord by the Tenant. The Tenant stated in her direct testimony that no forwarding address has been provided to the Landlord.

The Landlord seeks an order of possession and a monetary order for unpaid rent of \$726.00 for February 2012.

The Tenant has provided a new mailing address at the end of the hearing for delivery of this decision. The file and any subsequent documents shall be amended to reflect the new address.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Analysis

Both parties agree that the Tenant took over this Tenancy from her father approximately 2 years ago. The monthly rent is \$726.00 payable on the 1<sup>st</sup> of the month and a security deposit of \$312.50 was paid.

I find it unlikely based upon the Tenant's direct testimony that if notice was given to end the tenancy on February 1, 2012 that she would not return the rental unit keys. The Tenant's witness J.Y.'s evidence does not support the Tenant's claims that notice was given. The Tenant's notice asserts that if the Landlord did not deal with the Tenant's repair concerns that the tenancy was at an end. The Tenant's notice does not satisfy Section 52 of the Residential Tenancy Act for form and content of a notice to end tenancy. The Tenant's evidence does not provide the date of notification, the rental address or the effective date of ending the tenancy. I find that proper notice has not been given by the Tenant.

I am satisfied that the Landlord has properly served the Tenant with the notice of hearing and evidence packages. The Landlord sent the package by registered mail on February 16, 2012, which the Tenant has acknowledged receiving in this manner. The Tenant is deemed under the Residential Tenancy Act to have received the package 5 days later on February 21, 2012. I accept the Landlord's evidence and find that the Tenant was served with a 10 day notice to end tenancy for unpaid rent based upon the proof of service document provided by the Landlord. Based upon the facts above, I find that the Landlord is entitled to an order of possession. Possession is not being disputed by the Tenant as she states that she no longer resides at that rental. The Landlord is granted an order of possession.

As for the monetary order, I find that Tenant did not provide proper notice and the Landlord is entitled to February 2012 rent of \$726.00. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$312.50 security

deposit as partial satisfaction of this claim and I grant a monetary order under section 67 for the balance due of \$463.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$463.50. The Landlord may retain the \$312.50 security deposit.

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: March 06, 2012.

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Residential Tenancy Branch