



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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, compensation for damages or losses, and the filing fee.

Both 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.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession, a monetary order for unpaid rent, compensation for damages or losses, and the filing fee?

Background and Evidence

The Landlord and Tenant agree that they have a month to month tenancy agreement which commenced on November 01, 2007. The parties agree that the rent is \$900.00 per month, due on the first of the month, and that the Landlord has a security deposit of \$405.00 plus interest from the date it was paid in 2007. The tenancy agreement states that the Landlord is entitled to a \$20.00 fee if the rent is paid late. The parties agree that the Tenant pays the Landlord \$45.00 per month for a parking spot.

The Tenant testified that he phoned the head office for the Landlord either at the end of January or beginning of February 2012 and spoke with an agent there about the motor vehicle accident that he had in August 2011 and the fact that his medical EI benefits had ran out in January 2012 and he was waiting for a cheque from his union or ICBC before he could pay his rent for February. The Tenant stated that the agent for the Landlord who worked out of their head office told him by phone that he did not have to worry about his rent being late and that he did not have to worry if he received a Notice to end Tenancy. The Tenant testified that after the phone call, he did receive a Notice to End Tenancy at his rental unit on February 03, 2012 which was posted on his door.

The Notice to End Tenancy informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to

dispute the Notice. The Notice stated that the Tenant had until February 13, 2012 to move out of the rental unit.

The Tenant did not file an Application to dispute the Notice within 5 days. The Tenant stated that he paid the rent and parking fee to the Landlord on February 17, 2011 in the amount of \$945.00. The Tenant confirmed that he received a receipt that stated for use and occupancy only when he paid the rent, but that he did not understand what the term meant. The Tenant stated that he let the Landlord know that he would pay the rent for March as soon as he gets his cheque from his union or ICBC. The Tenant stated that he is trying to get the March 2012 rent for the Landlord as soon as possible, but that he had not yet received it as of the date of this hearing. The Tenant confirmed that he is still in the rental unit at this time and would like his tenancy to continue.

The Landlord testified that the Notice to End Tenancy was served on the Tenant on February 03, 2012 by posting it on the Tenant's door. The Landlord stated that the Tenant received it but did not pay the outstanding rent within five days. The Landlord applied for dispute resolution on February 14, 2012. The Landlord stated that the Tenant paid the rent on February 17, 2012 and the parking for the month and was issued a receipt stating for use and occupancy only. The Landlord stated that the Tenant did not pay the \$20.00 late fee for February's rent. The Landlord stated that the Tenant did not move out of the rental unit and the Landlord has not received any rent for March 2012. The Landlord is seeking the \$20.00 late rent fee for February 2012, rental income loss of \$900.00 for March 2012, and the parking fee of \$45.00 for March 2012 as the Tenant has not moved out of the rental unit at this time. The Landlord has also requested a late fee of \$20.00 for rent for March 2012 be paid by the Tenant.

The Landlord's agent ZM at the hearing testified that she had spoken with the agent at head office who handles tenant relations and that no agreement was reached with the Tenant about continuing his tenancy. The Landlord's agent stated that head office had agreed to go ahead with the application for dispute resolution and seek an end to the tenancy. The Landlord stated that they are seeking an order of possession, a monetary order for the rental income loss for March 2012 (\$900.00), the outstanding parking for March 2012 (\$45.00), late fees of \$20.00 for February 2012 and \$20.00 for March 2012 rent, plus the filing fee (\$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 was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on February 03, 2012 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was served by posting it at the rental unit, it was deemed to have been served by February 06, 2012, which is three days from the date posted. 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 February 11, 2012. Although the Landlord indicated that the Tenant had until February 13, 2012 to vacate the premises, the earliest effective date is 10 days from the date of service, thus this is corrected to February 16, 2012 based on 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 February 16, 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 between these parties is that rent is due on the first of the month. The parties agree that the Tenant did not pay the February's rent and parking until February 17, 2012 and the Landlord issued a receipt for use and occupancy only.

The Landlord applied for rental income loss for March 2012. The Tenant agrees he currently owes rent and parking for March 2012 in the amount of \$900.00 and \$45.00 respectively. I find that the Landlord has established a monetary claim of \$945.00 for rental income loss and parking for March 2012.

The Landlord is seeking a total of \$40.00 in late fees for February and March 2012 rent. The Tenant paid rent late for February 2012, as a result I find that the Landlord is entitled to the \$20.00 late fee for February 2012, as allowed by the tenancy agreement and the Act and Regulation. As I have found that the tenancy ends effective February 16, 2012, in accordance with the Notice given, the Landlord is not entitled to the late fee for March 2012. I deny the Landlord's request for a late fee for March 2012.

As the Landlord has mostly succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding.

I grant the Landlord an order under section 67 for **\$1,015.00**.

Conclusion

I dismiss the Landlord's request for a late fee for March 2012 rent.

I find that the Landlord is entitled to an order of possession not later than **two (2) days after service** of this order on the Tenant. This order must be served on the Tenant and may be filed in Supreme Court.

I find that the Landlord is entitled to \$1,015.00 comprised of late fee for February 2012 rent, rental income loss for March 2012, parking fee for March 2012 and the filing fee. I find that the Landlord is entitled to monetary order pursuant to section 67 against the Tenant in the amount of **\$1,015.00**. 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: March 05, 2012.

Residential Tenancy Branch