



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 provided affirmed testimony that she served the Tenant by registered mail with the Application for Dispute Resolution and Notice of Hearing package on March 01, 2012. The Landlord provided copies of the receipt and tracking information from Canada Post into evidence.

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 for March 01, 2012 in the amount of \$239.00 as the has 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 February 13, 2012. The Landlord testified that the Tenant did not comply with the Notice as she failed to pay the rent as required by the Notice. The Landlord stated that the Tenant did not move out of the rental unit by February 26, 2012 as required by the Notice. The Landlord stated that the Tenant is still residing in the rental unit.

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 March 2012 as it is reasonable to do so. The Tenant is aware that rent for March 2012 is due, and she has remained in the rental unit after March 01, 2012.

The Landlord stated that the Tenant owes them rent arrears in the amount of \$398.00 which the Tenant had agreed in writing to repay in the amount of \$50.00 per month for a

period of 8 months starting in January 2012. The Landlord stated that they have neglected to claim all of these amounts on their Application, only claiming \$120.00 of the amounts owed, and neglected to provide a copy of the agreement signed by the Tenant to pay the amount of \$398.00 in instalments during her tenancy. The Landlord stated that they wish to apply for these amounts, as well as an NSF fee they incurred from the Tenant.

Accordingly, I find that it is appropriate to sever the amount of \$120.00 from the Landlord's claim. The Landlord's claim for NSF fees, and rent arrears owing, excluding the monthly rent for February 2012 and March 2012 which have been dealt with in this decision, are dismissed with liberty to reapply.

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 or rental income loss and recovery of the filing fee?

Background and Evidence

The Landlord testified that the tenancy agreement commenced on January 06, 2006, and rent is due on first day of the month. The Landlord stated that the rental unit is subsidized housing and that the current monthly rent is \$239.00 per month. The Landlord stated that the Tenant did not pay a security deposit or pet deposit when the tenancy commenced. The Landlord provided a copy of the signed tenancy agreement into evidence.

The Landlord's witnesses LH and BC both testified that they served the 10 Day Notice to End Tenancy for Unpaid Rent in person to the Tenant on February 13, 2012 at 9:00 A.M. at the rental unit. This Notice informed the Tenant that the Notice would be cancelled if \$359.00 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 the rental unit by January 26, 2012. This Notice also explains the Tenant had five days to dispute the Notice. The Landlord provided a copy of the Notice into evidence. The Landlord filed an Application for Dispute Resolution on February 29, 2012, which they served on the Tenant by registered mail.

The Landlord testified that the Tenant paid the Landlord \$239.00 representing February 2012 rent on March 08, 2012. The Landlord stated that they issued the Tenant a receipt which stated for use and occupancy only. The Tenant has made no further rent payments and has failed to pay the rent for March 2012 and other rent arrears. 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 testified that because the Tenant has not moved out of the rental unit she has rental income loss of \$239.00 rent for March 2012. The Landlord requests an order for the rental income loss of \$239.00, 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 February 13, 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 February 13, 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 February 18, 2012. The Landlord indicated on the Notice that the Tenant had until January 26, 2012 which is more than the 10 days specified in the Act, however, I find that it does not invalidate the Notice pursuant to section 53 of the Act. 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 January 23, 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 and I grant the Landlord an **order of possession** effective **two days after service** on the Tenant.

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 day of each month. I find that the Tenant failed to pay the outstanding rent for February 2012 when it was due. I accept that the Tenant paid the rent for February 2012 in the amount of \$239.00 on March 08, 2012. I accept that the Landlord issued a receipt for use and occupancy only, and I find that the Landlord has not reinstated the tenancy.

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, I find that the Landlord is entitled to rental income loss of \$239.00 for March 2012 as they have not been able to rent out the rental unit for March and the Tenant has not paid rent.

I find that the Landlord has established a monetary claim of \$239.00, comprised of rental income loss for March 2012.

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 \$289.00.

I grant the Landlord an order under section 67 in the amount of **\$289.00**.

Conclusion

The Landlord's claim for NSF fees, and rent arrears owing, excluding the monthly rent for February 2012 and March 2012 which have been dealt with in this decision, are dismissed with liberty to reapply.

I grant the Landlord an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant and may be filed in the Supreme Court.

I grant the Landlord a monetary order in the amount of **\$289.00**. 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 15, 2012.

Residential Tenancy Branch