



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 under the Residential Tenancy Act, (the “Act”), by the Landlord for an order of possession, a monetary order for unpaid rent, to recover the filing fee, and an order to keep all of the security deposit.

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.

Preliminary Matter(s)

The Landlord indicated several matters of dispute on their application. The Landlord’s monetary claims for unpaid rent are in dispute between the parties, and the Landlord has provided insufficient evidence with regards to their monetary claims. Both the Landlord and the Tenant acknowledged that they failed to serve copies of evidence on the other party. The Tenant confirmed that he had only been served with the Ten Day Notice to End Tenancy, the Landlord’s Application for Dispute Resolution and the Notice of Hearing. The Landlord stated that she had received nothing from the Tenant.

As a result, I determined that it was appropriate to sever the Landlord’s claims for unpaid rent and their request to keep all of the security deposit.

Therefore, I will deal only with the Landlord’s request for an order of possession and filing fee, and I dismiss the balance of the Landlord’s claim with liberty to reapply.

The Tenant stated at the hearing that his name is RC and that he also goes by the name WRC, as a result I determined that it was appropriate to amend the Landlord’s application to reflect the correct order of the names used by the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession, and the filing fee?

Background and Evidence

The Landlord and Tenant agree that they have a verbal tenancy agreement which they entered into on April 15, 2007. The parties agree that the rent is currently \$750.00 per

month and that the Tenant paid a security deposit of \$325.00 to the Landlord when the tenancy commenced. The parties agreed that the Tenant paid pro-rated rent for April 15 to 30, 2007 and that the rent was due on the first of the month thereafter.

The Tenant stated that although the tenancy started out with rent due on the first of the month, that he was not able to always pay on the first of each month and that the Landlord allowed him to pay on varying dates. The Tenant agrees that he is in rent arrears to the Landlord, but not as much as the Landlord is claiming.

The Landlord stated that the rent has always been due on the first of each month and that the Tenant has been late many times and that she has had enough of his late payments of rent and that she wants him to move out as he is in significant rent arrears.

The parties agree that on February 24, 2012 the Landlord served the Tenant in person with a 10 Day Notice to End Tenancy. The Tenant confirms that he received the 10 Day Notice which was two pages, and noticed that the Landlord had misspelled his name. The Tenant stated that the Landlord returned on March 03, 2012 and served him with the Application for Dispute Resolution and the Notice of Hearing. The Tenant stated that on March 03, 2012 he advised the Landlord that his name had been misspelled on the 10 Day Notice to End Tenancy and he corrected it on his copy of the 10 Day Notice to RC instead of RW and the Landlord initialled it. The Tenant stated that the Landlord also changed the end of tenancy date to March 05, 2012. The Tenant confirmed that he has not moved out of the rental unit at the time of this hearing (March 19, 2012).

The Landlord confirmed that the 10 Day Notice of February 24, 2012 was amended with the Tenant on March 03, 2011 to correct the spelling of the Tenant's name and the end of tenancy date.

The Tenant stated that he did not apply for dispute resolution. The Tenant stated that he paid the Landlord some of the rent owed. The Tenant stated that after February 24, 2012 he paid \$760.00 to the Landlord on March 05, 2012 and \$100.00 to the Landlord on March 08, 2012. The Tenant stated that he currently owes the Landlord a balance of \$855.00 to date.

The Landlord stated that the Tenant owed \$105.00 rent for December 2011, \$750.00 rent for January 2012, and \$750.00 rent for February 2012, as a result they issued a 10 Day Notice for Unpaid Rent to the Tenant on February 24, 2012. The Landlord stated that the Tenant also failed to pay rent for March 2012 in the amount of \$750.00. The Landlord filed for dispute resolution on March 02, 2011 stating that \$1,605.00 was owed as per the 10 Day Notice and \$750.00 for March rent was also owed. The Landlord stated that the Tenant paid \$760.00 on March 05, 2012 towards the outstanding rent and \$100.00 on March 08, 2012. The Landlord stated that the Tenant currently owes the Landlord \$1,495.00 in unpaid rent.

The Landlord is seeking an order of possession plus the filing fee for this Application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the testimony of the parties confirmed that the tenancy agreement is that the rent is due on the first of the month. The Tenant has provided insufficient evidence to support that rent was due on any date other than the first of the month.

The testimony of the parties confirmed that on March 03, 2012 the parties, together in writing, they amended the Notice that the Landlord had previously served on the Tenant on February 24, 2012 to correct the spelling of the Tenant's name and the end date of the tenancy to March 05, 2012. As a result of the amendment by the parties to correct the errors on the original notice, I find that the Notice was properly completed and served on the Tenant on **March 03, 2012**, pursuant to the Act and Policy Guideline.

As the amended Notice was personally served on the Tenant on March 03, 2012, I have deemed it to have been served on the same day. The Notice states that the Tenant had five days to pay the full amount of the outstanding rent or the tenancy would end from the service date. The Tenant did not pay the outstanding rent or file an application to dispute the Notice within five days from the date of service. The deadline to do so was March 08, 2012. The Landlord stated on the amended Notice that the Tenant had until March 05, 2012 to vacate the rental unit, however this corrects March 13, 2012, as this is ten days from the deemed service date, pursuant to the provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days of service of the Notice, and the Tenant did not move out as required by the Notice. I also find the Tenant failed to file an application for dispute resolution within five days of service of 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 March 13, 2012, which is ten days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession for the rental unit effective 2 days from the date of service of the order on the Tenant.

As the Landlord has in part succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding, and I order that the Landlord may deduct this amount from the security deposit which they hold. The balance of the security deposit must be dealt with in accordance with the Act.

Conclusion

The Landlord's other disputes: unpaid rent and the request to keep the balance of the security deposit, as set out on their Application, are dismissed with liberty to reapply.

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 order that the Landlord may deduct \$50.00 from the security deposit. The balance of the security deposit must be dealt with in accordance with the Act.

The order accompanies 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 19, 2012.

Residential Tenancy Branch