



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 for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, and to recover the cost of the filing fee from the Tenant for 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 March 22, 2012. Mail receipt numbers were provided in the Landlord's verbal testimony. Based on the Landlord's submission I find the Tenant has been sufficiently served notice of this proceeding.

The Landlord appeared at the teleconference hearing and was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. Has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach, pursuant to sections 55 and 67 of the *Act*?

Background and Evidence

The Landlord testified that he entered into a fixed term tenancy agreement with the Tenant that began on September 10, 2011 and is set to switch to a month to month tenancy after August 31, 2012. Although the tenancy agreement indicates rent is payable on the first of each month in the amount of \$950.00; the Landlord agreed to lower the rent for the Tenant to \$850.00 effective at the beginning of the tenancy. The

Tenant paid \$425.00 as the security deposit on September 3, 2011 based on the lower rent.

The Landlord confirmed the Tenant was personally served a 10 Day Notice for unpaid rent on March 4, 2012 at 2:10 p.m. The Landlord referenced the tenant payment ledger provided in his evidence and confirmed no rent has been paid for March or April 2012 and the Tenant had an accumulated unpaid balance of \$660.00 as of February 5, 2012.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenants.

I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act* and the Tenant failed to pay the rent in full within 5 days after receiving this notice.

In the absence of an application to dispute the Notice, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, March 14, 2012, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Based on the aforementioned I hereby approve the Landlord's request for an Order of Possession.

The Landlord claims for unpaid rent for February and March 2012 in the amount of \$1,510.00. Section 26 of the *Act* states that a Tenant must pay rent when it is due in accordance with the tenancy agreement. In this case this rent was due March 1, 2012. Therefore I find the Landlord has met the burden of proof to establish a loss and I hereby approve his request for unpaid rent in the amount of **\$1,510.00**.

The Landlord requested the monetary order include unpaid rent for April 2012 rent; however this tenancy ended on the effective date of the 10 Day Notice to End Tenancy which is, March 14, 2012, pursuant to section 44(1)(a)(ii) of the *Act*.

Based on the above, I find the Landlord's claim for April 2012 is for loss of rent, as the tenancy has ended and the Tenant continues to occupy or over hold the rental unit which prevents the Landlord from re-renting the unit at this time. Therefore I approve the Landlord's request of **\$850.00** for loss of rent for April, 2012, pursuant to section 67 of the Act.

The Landlord has been successful with his application; therefore I award him recovery of the **\$50.00** filing fee.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord's decision will be accompanied by a Monetary Order for **\$2,410.00** (1,510.00 + 850.00 + 50.00). This Order is legally binding and must be served upon the Tenant.

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: April 04, 2012.

Residential Tenancy Branch