



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF
 MT DRI CNR RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution file by the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for unpaid rent, and a Monetary Order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed to allow more time to make his application to dispute a notice, to cancel a notice to end tenancy issued for unpaid rent, to dispute an additional rent increase and for reduced rent for repairs, services or facilities agreed upon but not provided.

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 27, 2012. Mail receipt numbers were provided in the Landlord's evidence. Based on the written submission of the Landlord I find the Tenant was sufficiently served notice of this proceeding.

The Landlord and her Agent appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The Tenant did not appear at the teleconference hearing, despite him being served notice of this proceeding in accordance with the *Act*, and despite this hearing being convened to hearing the Tenant's application for dispute resolution.

Issue(s) to be Decided

1. Has a valid 10 Day Notice to End Tenancy for unpaid rent (the Notice) been issued and served to the Tenant in accordance with sections 46 and 52 of the *Residential Tenancy Act* (the Act)?
2. Has the Landlord met the burden of proof to end this tenancy and obtain an Order of Possession and a Monetary Order in accordance with sections 46, 55, and 67 of the Act?

Background and Evidence

The Landlord affirmed the tenancy began on February 1, 2006 for a fixed term which switched to a month to month tenancy after one year. As of December 2011 rent was payable on the first of each month in the amount of \$890.00 and the Tenant was issued a notice of rent increase three months prior to January 2012 to raise the rent to \$930.00 per month effective January 1, 2012. The Tenant paid a security deposit in 2006 however the Landlord did not have her records with her during the hearing and was not able to confirm the amount paid for the security deposit.

The Landlord advised the Tenant has failed to pay his full rent since December 2011 and a 10 Day Notice to end tenancy was posted to his door and sent registered mail on March 13, 2012. The Landlord is seeking an Order of Possession and a Monetary Order to recover the balance owed of \$290.00 for December 2011 plus the full rent for January, February, March, and April 2012.

Analysis

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has not presented the merits of their application and the application is hereby dismissed.

Landlord's Application

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 tenant.

Rent Amount – Section 43 (1)(a) of the *Act* provides that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations. Part 4 section 22 of the Regulation stipulates the annual allowable rent increase is calculated based on the inflation rate. The legislative allowable rent increase for 2012 is 4.3 %.

The evidence supports that as of December 2011 rent was \$890.00 per month therefore the allowable rent increase for 2012 cannot exceed \$928.27 ($\$890.00 \times 4.2\%$). In this case the Landlord issued notice to increase the rent effective January 1, 2012, to \$930.00 per month, an amount that does not comply with section 43 of the *Act* or Section 22 of the Regulation; Therefore I find the notice of rent increase to be invalid and the rent remains at \$890.00 per month.

Order of Possession – I have reviewed the aforementioned and the documentary evidence and I accept that the Tenant has been served with a 10 Day Notice to end tenancy as declared by the Landlord and as noted on the Tenant's application for dispute resolution. The notice was received by the Tenant on March 13, 2012, and the effective date of the notice is March 23, 2012 in accordance with section 26 of the *Act*. I accept the evidence before me that the Tenant has failed to dispute the Notice and failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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 the effective date of the Notice, **March 23, 2012**, and I hereby grant the Landlord an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent comprised of \$290.00 for December 2011, \$890.00 for January 2012, \$890.00 for February 2012, and \$890.00 for March 2012. As noted above this tenancy ended March 23, 2012, in accordance with the 10 Day Notice.

The total amount of unpaid rent and late fees claimed prior to the end of the tenancy is \$2,960.00, pursuant to section 26 of the Act which stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the aforementioned, I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the Landlord has met the burden of proof and I award her a monetary claim of **\$2,960.00** for unpaid rent.

Loss of rent – The Landlord is seeking loss of rent for April 2012 given that the Tenant has failed to pay April 1, 2012 rent and is still occupying the unit. Therefore the Landlord will not regain possession to be able to re-rent the unit until after service of the Order of Possession.

Based on the aforementioned I find that the Landlord has succeeded in proving their loss, as listed above, and I approve their claim for **\$890.00** for loss of April 2012 rent.

Filing Fee - The Landlord has succeeded with their application and therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim as follows:

| | |
|---|--------------------------|
| Unpaid Rent up to March 31, 2012 | \$2,960.00 |
| Loss of Rent April 2012 | 890.00 |
| Filing Fee | <u>50.00</u> |
| Total amount due to the Landlord | <u>\$3,900.00</u> |

The Landlord was not able to provide the actual amount paid for the security deposit. Therefore I order that the deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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 **\$3,900.00**. 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 13, 2012.

Residential Tenancy Branch