



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Preliminary Issues

At the outset of the hearing the Landlord confirmed he was seeking to end this tenancy based on the 10 Day Notice for unpaid rent and was therefore withdrawing his request for an Order of Possession for breach of an agreement.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and 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*, served personally at the rental unit on April 12, 2012 at 9:30 p.m. in the presence of a witness. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding.

The Landlord 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. No one appeared on behalf of the Tenant despite her being served notice of this proceeding in accordance with the *Act*.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, 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 *Residential Tenancy Act*?

Background and Evidence

The Landlord affirmed that they entered into a written month to month tenancy agreement that began on October 1, 2011. Rent is payable on the first of each month in

the amount of \$825.00 and on or before October 1, 2011, the Tenant paid \$425.00 as the security deposit.

The Landlord confirmed service of the 10 Day Notice, in person to the Tenant on March 2, 2012 as per the copy provided in his evidence for \$825.00 that was due for March 2012 rent. The Landlord clarified that the Tenant paid \$500.00 on February 26, 2012 towards February 1, 2012 rent which left a balance owing of \$325.00 for February 2012. No rent has been paid for March 2012 or April 2012 and the Tenant continues to occupy the rental unit.

The Landlord requested the Tenant be evicted as soon as possible and that he obtain monetary compensation for the unpaid rent.

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.

Order of Possession - 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*, that the Tenant failed to pay the rent within 5 days after receiving this notice, and that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, March 12, 2012 and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$325.00 for February 2012 plus \$825.00 for March 1, 2012, 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 him a monetary claim of **\$1,150.00** (\$325.00 + \$825.00) for accumulated unpaid rent up to March 1, 2012.

Loss of rent – As noted above this tenancy ended March 12, 2012, in accordance with the 10 Day Notice therefore I find 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. The Landlord will not regain possession of the unit until after service of the Order of Possession and will therefore lose rent for the entire month of April 2012.

Based on the aforementioned I find that the Landlord has succeeded in proving their loss, as listed above, and I approve their claim for **\$825.00** for loss of April 2012 rent.

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

Any 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 FIND 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.

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$2,025.00** (\$1,150.00 + \$825.00 + \$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 27, 2012.

Residential Tenancy Branch