



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of 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 documentary evidence. The tenant is deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

This tenancy started approximately 15 years ago, on or about June 01, 1990. Rent for this unit is now \$725.00 per month and is due on the first of each month. The landlord's agent testifies that there was a written tenancy agreement in place however due to a flood in a storage facility the landlord's agent no longer has a copy of this agreement.

The landlord's agent testifies that the tenant failed to pay rent for January, 2012. The landlord's agent testifies that a 10 Day Notice to End Tenancy for unpaid rent was posted to the tenant's door on February 02, 2012 and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end 10 days later. The landlord omitted to put the date on this Notice when the tenant should vacate the rental unit but as it was a 10 Day Notice the landlords agent states the tenant should have vacated by February 12, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that date the tenant also failed to pay rent for February, March and April, 2012. The total amount of outstanding rent is now \$2,900.00. The landlord's agent testifies that she made an error in her calculations for the unpaid rent on the application and had claimed \$3,000.00. The landlord's agent requests that this figure is amended to \$2,900.00.

The landlord's agent seeks a Monetary Order to recover the outstanding rent and filing fee paid for this proceeding and seeks an Order of Possession to take effect as soon as possible.

Analysis

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, I am satisfied that the tenant has failed to pay rent for January, February March and April, 2012 and find the landlord is entitled to recover rent arrears to the sum of **\$2,900.00** pursuant to s.67 of the *Act*.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing of **\$2,950.00**

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenants' door it was deemed served three days after posting and therefore the effective date of the Notice would be February 15, 2012 pursuant to s. 53 of the *Act*. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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 and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,650.00 comprised of unpaid rent and the filing fee**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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 12, 2012.

Residential Tenancy Branch