



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, MNDC, LAT, AAT, RR

For the landlord – OPR, OPC, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The hearing went ahead as scheduled the landlord dialed into the conference call but after 10 minutes the tenant had not dialed into the call. Based on this I find that the tenant has failed to present the merits of their application and the tenant's application is dismissed without leave to reapply.

The landlord has applied for an Order of Possession for unpaid rent and for cause; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application. At the outset of the hearing the landlord withdrew her application for an Order of Possession for cause.

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 May 11, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord 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.

Issue(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?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This month to month tenancy started on April 01, 2012. Rent for this unit is \$750.00 per month. Rent is due on the first of each month. The tenant paid a security deposit of \$375.00 on March 24, 2012.

The landlord testifies that the tenant failed to pay rent for May, 2012 of \$750.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on May 02, 2012. This was posted to the tenant's door and was deemed to have been served three days after posting. This Notice states that the tenant owes rent of \$750.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on May 10, 2012. The tenant did not pay the outstanding rent but did apply to dispute the Notice on May 08, 2012, however the tenant has not appeared at the scheduled hearing today to present the merits of his application.

The landlord seeks to recover a loss of rent for June, 2012 as the tenant has not moved from the rental unit and the landlord has been unable to prepare or advertise the unit for rent for June 01, 2012.

The landlord has applied to retain the tenant's security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect within two days of service.

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 with the undisputed evidence before me that the tenant has failed to pay rent for May, 2012 and the landlord is entitled to recover rent arrears to the sum of **\$750.00** pursuant to s.67 of the *Act*.

With regards to the landlords claim for a loss of rent for June, 2012; I refer the parties to the Residential Tenancy Policy Guidelines #3 which states, in part, that In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. However a landlord must still show how they will mitigate their loss in this matter and as the landlord still has the opportunity to re-rent the unit for part of June, 2012 I will limit the landlords claim to the sum of **\$375.00** for a loss of rent to June 15, 2012 in the event the landlord is able to re-rent the unit. If the unit remains unrented for the remainder of June, 2012 the landlord is at liberty to file another application to recover a loss of rent for the remainder of that month.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$375.00** in partial payment of the rent arrears.

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 landlords will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$1,125.00
Less Security Deposit	(-\$375.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$800.00

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy pursuant to section 88 of the *Residential Tenancy Act*. The notice is deemed to have been received by the tenant on May 05, 2012 and the effective date of the notice is amended to May 15, 2012 pursuant to section 53 of the *Act*. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days and although the tenant did apply to dispute the Notice to End Tenancy within five days the tenant did not attend the hearing.

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 amended effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

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 **\$800.00**. 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 landlord 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: May 30, 2012.

Residential Tenancy Branch