



Dispute Resolution Services

Page: 1

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 and a Monetary Order for unpaid rent or utilities, to keep all or part of pet and or security deposit, 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 April 17, 2012. Mail receipt numbers were provided in the Landlord's evidence. Based on the Landlord's submissions I find the Tenant was sufficiently served notice of this proceeding in accordance with the *Act*.

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

At the outset of the hearing the Landlord advised that he wished to withdraw his request for expenses that he has not yet incurred. He stated he misunderstood how the process would work and is now seeking the Order of Possession and the accumulated

unpaid rent. He advised that he understood he could file another application if he incurs any additional losses or damages.

The Landlord affirmed that he entered into a written fixed term tenancy agreement with the Tenant that began on February 1, 2012 and is set to expire in one year. Rent is payable on or before the first of each month in the amount of \$1,000.00 and by the end of February 2012, the Tenant had paid \$500.00 as the security deposit.

The Landlord confirmed service of the 10 Day Notice was conducted on April 2, 2012 when it was posted to the Tenant's door. As of today's date rent for March, April and May 2012 remains unpaid for a total amount due of \$3,000.00 (3 x \$1,000.00). He is seeking to regain possession for as soon as possible.

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 have reviewed all documentary evidence and accept that the Tenant has been served with notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenant on April 5, 2012, three days after it was posted to the door, and the effective date of the notice is April 15, 2012, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant has 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, April 15, 2012, and I hereby grant the Landlord an Order of Possession.

Claim for unpaid rent - The Landlord claims for accumulated unpaid rent of \$2,000.00 comprised of rent for March 2012 and April 2012 (2 x \$1000.00). Pursuant to section 26 of the *Act* 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 Landlords have met the burden of proof and I award them a monetary claim of **\$2,000.00** for accumulated unpaid rent.

Loss of rent – As noted above this tenancy ended April 15, 2012, in accordance with the 10 Day Notice therefore I find the Landlord is seeking loss of rent for May 2012 given that the Tenant has failed to pay May 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 May 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 **\$1,000.00** for loss of May 2012 rent.

The Landlord has succeeded with their application; therefore I award recovery of the **\$100.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid rent (March, and April 2012)	\$2,000.00
Loss of rent for May 1, 2012	1,000.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$3,100.00
LESS: Security Deposit \$500.00 + Interest 0.00	<u>-500.00</u>
Offset amount due to the Landlord	<u>\$2,600.00</u>

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 **\$2,600.00**. 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: May 03, 2012.

Residential Tenancy Branch