



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

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.

Service of the hearing documents, by the Landlord to the Tenant, was done in person by the Landlord at the rental unit on April 24, 2012, in accordance with section 89 of the *Act*. The Tenant submitted evidence in response to this application where she acknowledges receipt of the hearing documents on April 24, 2012.

The Landlord and her assistant 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 at the teleconference hearing on behalf of the Tenant, despite her acknowledging receipt of the Notice of hearing.

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 she entered into a verbal month to month tenancy agreement with the Tenant that began in November 2009. Rent is payable on the first of each month in the amount of \$350.00 and no deposit was paid.

The Landlord confirmed service of several Notices, two 1 Month Notices to end tenancy for cause and several 10 Day Notices as provided in the Landlord's evidence. The most recent 10 Day Notice was served personally to the Tenant on April 3, 2012, at the rental unit.

The Landlord confirmed that the Tenant failed to pay rent for November 2011, December 2011, and January 2012 and all payments received have been put towards the accumulated unpaid rent. Just prior to the April 3, 2012 notice the Tenant paid \$350.00 on March 4, 2012 and \$700.00 on March 17, 2012. After service of the April 3, 2012 Notice no payments were made until May 6, 2012 at which time a payment of \$350.00 was received. The remaining balance owing for rent is \$1,050.00.

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, **April 13, 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 accumulated unpaid rent of \$700.00 for March 2012 and April 2012 (as payments received in March were put towards previous unpaid balance owing from November and December 2011, and January 2012) 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 Landlord has met the burden of proof and I award her a monetary claim of **\$700.00** for March 2012 and April 2012 unpaid rent.

Loss of rent – As noted above this tenancy ended **April 13, 2012**, in accordance with the 10 Day Notice therefore I find the Landlord is seeking loss of rent for May 2012 (not unpaid rent) 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 her loss, as listed above, and I approve their claim for **\$350.00** for loss of May 2012 rent.

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 Landlord's decision will be accompanied by a Monetary Order for **\$1,050.00** (\$700.00 + 350.00). 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 11, 2012.

Residential Tenancy Branch