



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was personally served with the application for dispute resolution and notice of hearing in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on February 1, 2012. Rent in the amount of \$550.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$275.00. The Tenant failed to pay rent for May 2012 and on May 8, 2012 the Landlord personally served the Tenant with a notice to end tenancy for non-payment of rent (the “Notice”). The effective date of the Notice is May 22, 2012. The Tenant has not filed an Application for

Dispute Resolution, moved out of the unit by May 25, 2012 and has not paid the outstanding rent. As the Tenant has moved out of the unit, the Landlord states that he no longer requires an Order of Possession. The Landlord claims unpaid rent for May and June 2012 of \$1,100.00.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not filed an application to dispute the notice and has not paid the outstanding rent. Given these facts, I find that the Landlord has established a monetary claim for **\$550.00** in unpaid rent for May 2012. AS the Landlord no longer requires an Order of Possession, I dismiss this part of the application.

Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended pursuant the Landlord's election. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. The Landlord in this case elected to end the tenancy agreement for non-payment of rent by serving a 10 day notice to end tenancy with a move-out date of May 22, 2012. The Tenant moved out by May 25, 2012. As such, I find that the Landlord is not entitled to unpaid rent for June 2012.

As the Landlord has been successful with its claim, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$600.00**. Setting the security

deposit plus interest of \$275.00 off this entitlement leaves \$325.00 owing to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$275.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$325.00**. If necessary, this order may be filed in the Small Claims 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: June 12, 2012.

Residential Tenancy Branch