



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC O 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, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for other reasons, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, were done personally by the Landlord to the Tenant, at the rental unit on May 30, 2012, in accordance with section 89 of the Act. Based on the submissions of the Landlord I find the Tenant to be sufficiently served notice of this proceeding.

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 his being served notice of this proceeding in accordance with the Act.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord affirmed that the Tenant entered into a fixed term tenancy agreement that began in June 2010 and after one year switched to a month to month tenancy. Rent is payable on the first of each month in the amount of \$1,400.00 and on or before June 1, 2010, the Tenant paid \$700.00 as a security deposit.

The Landlord stated that back in October 2011 the Tenant fell upon hard times and could not find work. The Landlord was being patient with the Tenant who kept saying he would pay his rental arrears but he did not follow through with this.

The Landlord submitted that as of May 1, 2012 the Tenant had an accumulated unpaid rent of \$5,430.00 so on May 8, 2012 the Landlord served the Tenant with the two page 10 Day Notice to End Tenancy in person. No payments have been received since issuing the Notice and the Landlord requests an Order of Possession for as soon as possible.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by his evidence.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlords 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 Landlords have 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, May 18, 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 unpaid rent of \$5,430.00 up to and including May 1, 2012 rent; pursuant to section 26 of the *Act* which states 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 **\$5,430.00** for accumulated unpaid rent up to May 1, 2012.

Loss of rent – As noted above this tenancy ended May 18, 2012, in accordance with the 10 Day Notice; therefore I find the Landlord is seeking occupancy and loss of rent for June 2012 given that the Tenant has failed to pay June 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 the remainder of the month of June 2012.

Based on the aforementioned I find that the Landlords have succeeded in proving their loss, as listed above, and I approve their claim for **\$1,400.00** for occupancy and loss of June 2012 rent.

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

Monetary Order – I find that the Landlords are 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 up to May 1, 2012	\$5,430.00
Occupancy & Loss of rent for June 2012	1,400.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$6,930.00
LESS: Security Deposit \$700.00 + Interest 0.00	<u>-700.00</u>
Offset amount due to the Landlord	<u>\$6,230.00</u>

Conclusion

I HEREBY FIND the Landlords are 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.

The Landlords have been awarded a Monetary Order for **\$6,230.00**. 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: June 20, 2012.

Residential Tenancy Branch