



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC 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, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, 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 May 30, 2012. Mail receipt numbers were provided in the Landlord's verbal testimony. Based on the submissions of the Landlord I find the Tenant has been sufficiently served notice of this proceeding.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one appeared on behalf of the Tenant despite him being served notice of this proceeding in accordance with the Act. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

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

Background and Evidence

The Landlord affirmed that the Tenant entered into a fixed term tenancy agreement that began on January 1, 2006, and switched to a month to month tenancy after December 31, 2006. This tenancy agreement was entered into with a previous landlord and the applicant Landlord to this dispute purchased this building in 2009 and gained the rights to this tenancy agreement. Rent is payable on the first of each month in the amount of \$690.82 and on December 31, 2005 the Tenant paid \$282.50 as the security deposit.

The Landlord submitted a copy of the tenancy agreement and a 10 Day Notice to end tenancy into evidence. She advised that the 10 Day Notice was posted to the Tenant's door on May 3, 2012 after he failed to pay the amount due for May 1, 2012 rent. The Tenant is still occupying the rental unit and has not paid anything towards May or June 2012 rent. The Landlord seeks an Order of Possession effective two days upon service and a Monetary Order for the outstanding rent.

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 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, May 16, 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 \$654.10 for May 1, 2012, 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 Landlord has met the burden of proof and I award them a monetary claim of **\$654.10** for May 2012 unpaid rent.

Loss of rent – As noted above this tenancy ended May 16, 2012, in accordance with the 10 Day Notice; therefore I find the Landlord is seeking 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 entire month of June 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 **\$690.82** for use and occupancy and loss of June 2012 rent.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** 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 for May 2012	\$ 654.10
Use & Occupancy & Loss of rent for June 2012	690.82
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,394.92
LESS: Security Deposit \$282.50+ Interest \$9.99	<u>-292.49</u>
Offset amount due to the Landlord	<u>\$1,102.43</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.

The Landlord has been awarded a Monetary Order for **\$1,102.43**. 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 21, 2012.

Residential Tenancy Branch