



Dispute Resolution Services

Page: 1

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 Landlords to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to keep the security and or pet deposit, for money owed for compensation or damage 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's Agent to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on June 15, 2012. Mail receipt numbers were provided in the Agent's verbal testimony. Based on the submissions of the Landlord's agent I find the Tenant was sufficiently served notice of this proceeding.

The Landlord and her Agent 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.

Issue(s) to be Decided

1. Are the Landlords entitled to an Order of Possession?
2. Are the Landlords entitled to a Monetary Order?

Background and Evidence

The Landlord affirmed that she entered into a written month to month tenancy with the Tenant that began on August 1, 2011. Rent initially was to be paid monthly in the amount of \$1,800.00 however effective November 1, 2011 the parties agreed to reduce the rent to \$1,500.00 per month and is payable on the first of each month. The Tenant had paid \$900.00 on August 1, 2011 as the security deposit based on the \$1,800.00 per month rental agreement.

The Agent confirmed that when the Tenant fell behind in rent payments a 10 Day Notice to End Tenancy was posted to the Tenant's door on May 12, 2012 as supported by the proof of service document provided in their evidence.

The 10 Day Notice indicated an accumulated balance due of \$3,100.00 as of May 1, 2012. The Tenant made a partial payment of \$1,500.00 on May 25, 2012 and continues to reside in the rental unit. The Tenant has not made any further payments towards the accumulated balance or the June 1, 2012 rent. The Landlord seeks an Order of Possession and a Monetary Order for the unpaid rent and the loss of June 2012 rent.

Analysis

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 of the *Act*.

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 in full 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 25, 2012 and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlords' request for an Order of Possession.

Claim for unpaid rent - The Landlords claim for unpaid rent of \$1,600.00 which is comprised of a balance owing of \$100.00 for April 1, 2012 plus \$1,500.00 for May 1, 2012 rent; pursuant to section 26 of the *Act* which stipulates 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 **\$1,600.00** for accumulated unpaid rent up to May 1, 2012.

Loss of rent – As noted above this tenancy ended May 25, 2012, in accordance with the 10 Day Notice, therefore I find the Landlords are seeking payment for 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 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 **\$1,500.00** for occupancy and loss of June 2012 rent.

The Landlords have 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 April & May 2012	\$1,600.00
Occupancy & Loss of rent for June 2012	1,500.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$3,150.00
LESS: Security Deposit \$900.00 + Interest 0.00	<u>-900.00</u>
Offset amount due to the Landlord	<u>\$2,250.00</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.

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$2,250.00**. 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 29, 2012.

Residential Tenancy Branch