



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, OLC, FF

For the landlord – OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The tenant applied to cancel a Notice to End Tenancy for unpaid rent; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application.

The hearing went ahead as scheduled and the phone line remained open for 10 minutes for the tenant to dial into the hearing. However the tenant failed to dial in during this time so the hearing continued in the tenant's absence. As the tenant has failed to present the merits of their application the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*. The landlord gave sworn testimony that the tenant was served by registered mail on June 08, 2012. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

This month to month tenancy started on August 15, 2011. Rent for this unit is \$1,050.00 per month and is due on the first day of each month in advance.

The landlord testifies that the tenant failed to pay all the rent for January, 2012 of \$1,050.00 on January 14, 2012 the tenant paid \$240.00 which left an outstanding balance of \$810.00. On February 01, 2012 the tenant paid \$550.00 and three weeks later paid another \$500.00. On May 30, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent of \$810.00. This notice has an effective date of June 11, 2012 and was served in person to the tenant. The tenant failed to pay rent for June, 2012 on the day it was due so the landlord testifies she served the tenant with another 10 Day Notice to End Tenancy. This Notice states the tenant owes rent of \$1,860.00 and was served to the tenant by posting the notice to the tenant's door on June 06, 2012. This Notice has an effective date of June 14, 2012.

The landlord testifies that the tenant paid rent of \$1,050.00 for June on June 11, 2012. The landlord testifies that the tenant refused to pay rent for June unless the landlord signed receipts for rent payments made in 2012. These receipts included the payment made in February of \$500.00 which the tenant said was towards January's rent and a receipt showing the tenant had paid full rent for February on February 01, 2012. The landlord testifies that she signed these receipts and marked the June receipt to inform the tenant that this payment did not reinstate the tenancy.

The landlord testifies that she signed these receipts as she wanted an end to the matter and is happy to amend her monetary claim for January, 2012 to \$310.00 as the landlord testifies that she cannot now proof the tenant owed \$810.00.

The landlord seeks an Order of Possession to take effect as soon as possible and a Monetary Order to recover the unpaid rent of \$310.00 and the \$50.00 filing fee.

Analysis

Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord has established that rent is due on the first day of each month and the tenant failed to pay rent for January 2012. The landlord has amended her claim to the sum of \$310.00. Consequently, I find that the landlord is entitled to recover rent arrears of **\$310.00** and will receive a Monetary Order pursuant to s. 67 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The 10 Day Notice served in May, 2012 states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was served in person to the tenant on May 30, 2012 it is deemed served on that date. The tenant did not pay the outstanding rent within five days and although the tenant did file an application to cancel the Notice on June 01, 2012 the tenant has not appeared at the hearing to provide evidence or testimony to support their application. Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the first Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

As the landlord has been successful with the amended claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$310.00
Filing fee	\$50.00
Total amount due to the landlord	360.00

Conclusion

The tenant's application is dismissed without leave to reapply.

I HEREBY FIND in favor of the landlords amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$360.00**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme 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 25, 2012.

Residential Tenancy Branch