



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD 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 or utilities, to keep all or part of the security and or pet deposit, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and provided 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. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted copies of proof of service documents, a 10 Day Notice to end tenancy, and an application for tenancy into evidence. The Tenant acknowledged receipt of the hearing documents and the copies of the Landlord's evidence.

The parties agreed they entered into a month to month tenancy that began on August 29, 2007. Rent is payable on the first of each month and effective June 1, 2012 rent was increased to \$884.00 per month. On or before August 29, 2007 the Tenant paid \$400.00 as the security deposit.

The Landlord stated the Tenant has accumulated a balance of \$2,168.00 of unpaid rent which is comprised of \$400.00 from May, \$884.00 from June, and \$884.00 from July 2012. A 10 Day Notice to end tenancy was personally served to the Tenant on June 12, 2012 and the Tenant signed the proof of service document acknowledging receipt of the Notice.

The Tenant affirmed that he owes the Landlord \$2,168.00 and that he has not paid his rent due to his financial hardship. He confirmed that he understood he was liable to pay the past due rent and that he would have to move out of the rental unit after two days upon service of the Order of Possession.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant did not pay the rent and did not dispute the Notice. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, **June 22, 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.

The Tenant has a balance owing of rent of \$400.00 that was due May 1, 2012 plus \$884.00 that was due June 1, 2012 which is in breach of section 26 of the *Act* which stipulates rent is payable in accordance with the tenancy agreement.

Based on the aforementioned, I find the Landlord has met the burden of proof for their claim for unpaid rent from May and June 2012 and I award them **\$1,284.00** (\$400.00 + \$884.00).

As noted above this tenancy ended **June 22, 2012**, in accordance with the 10 Day Notice; however the Tenant continues to occupy the rental unit. The Landlord is therefore seeking money for "use and occupancy" of the unit for July 2012 and not rent.

The Landlord will not regain possession of the unit until after service of the Order of Possession and then has to advertise and ready the unit to be re-rented. Therefore I award the Landlord **\$884.00** for use and occupancy and loss of rent for the month of July 2012.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is 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 May & June 2012	\$1,284.00
Use and Occupancy & Loss for July 2012	884.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,218.00
LESS: Security Deposit \$400.00 + Interest 8.08	-408.08
Offset amount held in trust	<u>\$1,809.92</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **2 Days upon service to the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$1,809.92**. 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: July 18, 2012.

Residential Tenancy Branch