



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application 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.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, and was served to the tenant in person on June 14, 2012. The landlord's witness gave sworn testimony that service took place as declared by the landlord. The landlord served the tenant with additional evidence on June 21, 2012 and this was sent by registered mail to the tenant. Mail receipt and tracking numbers were provided in the landlord's documentary evidence.

The landlord appeared, gave sworn testimony, and 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 for unpaid rent?

Background and Evidence

This tenancy started on January 01, 2012 for a fixed term due to expire on June 30, 2012. Rent for this unit is \$775.00 per month which includes \$10.00 for parking. Rent is due on the first day of each month in advance. The tenant paid a security deposit of \$387.50.

The landlord testifies that the tenant failed to pay rent for June, 2012 of \$765.00. The landlord issued a 10 Day Notice to the tenant on June 03, 2012. This Notice states the tenant owes rent of \$765.00. The Notice states the tenant has five days to either pay the rent or dispute the Notice or the tenancy will end on June 13, 2012. The landlord testifies that the tenant paid \$300.00 on June 10, 2012 leaving an unpaid balance of \$465.00. Since that time the tenant has also failed to pay rent for July, 2012 of \$765.00. The landlord seeks to recover the sum for \$1,230.00 from the tenant.

The landlord seeks an Order of Possession to take effect as soon as possible and a Monetary Order to recover the unpaid rent and 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 all the rent for June and July, 2012. Consequently, I find that the landlord is entitled to recover rent arrears of **\$1,230.00** 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 Notice 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 posted to the tenant's door on June 03, 2012 it was deemed served three days later on June 06, 2012. Therefore I have amended the date of the Notice to June 16, 2012 pursuant to s. 53 of the *Act*. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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 amended effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

As the landlord has been successful with this 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 sum of **\$1,280.00**.

Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,280.00**. 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: July 04, 2012.

Residential Tenancy Branch