



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to present evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

This fixed term tenancy started on November 01, 2011 and expired on April 30, 2012.

The tenancy has now reverted to a month to month tenancy. Rent for this unit is \$725.00 per month plus \$10.00 parking and is due on the 1st of each month.

The landlords' agent testifies that the tenant failed to pay rent for June, 2012. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on June 02, 2012. This was posted to the tenants' door and was deemed to have been served three days after posting. This Notice stated that the tenant owed rent for June, 2012 of \$755.00 and this sum comprised of rent, parking fees and late fees of \$20.00. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on June 13, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days but did pay the sum of \$400.00 on July 03, 2012 and \$355.00 on July 11, 2012. The landlord's agent testifies that these sums were accepted for use and occupancy only and did not reinstate the tenancy. The landlord's agent testifies that the tenant has not paid rent or parking fees for July, 2012 to the amount of \$735.00 and a further sum of \$20.00 has been applied to the tenants account for late fees for July as specified under the tenancy agreement. The landlord seeks an Order of Possession for July 27, 2012.

The landlord's agent testifies that they have applied for unpaid rent for August but seek to withdraw this from their monetary claim as they have agreed a repayment plan with the tenant to pay \$377.50 on July 20 and \$377.50 on July 27, 2012. If the tenant makes these payments then the landlord agrees not to enforce the Monetary Order or the Order of Possession.

The landlord's agent testifies that the tenant has already paid a \$50.00 filing fee for this proceeding to the landlord so this section of the landlords claim is withdrawn.

The tenant does not dispute the landlords claim and agrees to pay the outstanding rent for July on the dates specified on the agreement with the landlord.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent.

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.*

Consequently I find that the tenant has failed to pay rent for July, 2012 and the landlord is entitled to recover these rent arrears to the sum of \$725.00. I further find that the tenant has failed to pay parking fees of \$10.00 as specified under the tenancy agreement and as rent for July is outstanding the landlord is also entitled to recover the sum of \$20.00 in late fees as specified under the tenancy agreement. Consequently, the landlord will receive a Monetary Order to the sum of **\$755.00** 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 *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay 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 effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

The landlord's agent and the tenant have agreed that should the tenant pay the outstanding rent, parking and late fee as agreed on July 20, 2012 of \$377.50 and on

July 27, 2012 of \$377.50 then the landlord will not enforce either the Monetary Order or the Order of Possession.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$755.00**. 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 **on July 28, 2012**. 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 11, 2012.

Residential Tenancy Branch