



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and for Cause and a Monetary Order for unpaid rent or utilities, to keep all or part of the security and or pet deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted that the Tenant was personally served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on July 19, 2012. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act; therefore I proceeded in the Tenant's absence.

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, a 1 Month Notice to end tenancy for Cause, and the tenancy agreement into evidence.

The Landlord confirmed the parties entered into a fixed term tenancy that began on October 1, 2010, which is when the Tenant took over the previous lease that began in 2007. The tenancy is scheduled to end on October 1, 2014 and the monthly rent is payable on the first of each month in the amount of \$1,500.00 per month. On October 1, 2007, the previous Tenant paid \$750.00 as the security deposit which was transferred to this Tenant's lease.

The Landlord affirmed that a 10 Day Notice and a 1 Month Notice for Cause were personally served to the Tenant July 6, 2012 and the Tenant signed the proof of service document acknowledging receipt of the Notices.

The Landlord stated he received a payment of \$350.00 on July 17, 2012 and that he provided the Tenant with a receipt for occupancy only. Then on August 1, 2012 the Landlord deposited the August 1st post dated cheque for \$1,500.00 and it has cleared the bank which leaves an accumulated balance owing of \$1,150.00.

The Landlord submitted that he had seen the Tenant just last week at which time he reminded her of today's hearing. He said she wanted to continue the tenancy on a month to month basis and that he told her he would have to think about it.

The Landlord has sought to regain possession of the unit as of August 31, 2012, and to recover the unpaid rent of \$1,150.00 plus the unpaid utilities of \$239.18. The Landlord advised the Tenant had been provided a copy of the CRD utility bill on July 6, 2012 and she has not paid anything towards this bill.

Analysis

Order of Possession – 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 made a partial payment of \$350.00 on July 17, 2012 and another payment on August 1, 2012, leaving an outstanding balance of \$1,150.00. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, **July 16, 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 effective **August 31, 2012**.

The Landlord has been awarded the Order of Possession in relation to the 10 Day Notice for unpaid rent; therefore his request for an Order of Possession for cause is moot.

Use & Occupancy – As noted above this tenancy ended **July 16, 2012**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent as the Tenant continues to occupy the unit and there is an outstanding balance due of \$1,150.00.

The Landlord will not regain possession of the unit until after service of the Order of Possession and has the obligation to attempt to re-rent the unit as soon as possible. Therefore I award the Landlord **\$1,150.00** for use and occupancy of the unit up to **August 31, 2012**.

Utilities – The evidence supports the Tenant was provided a copy of the utility bill on July 6, 2012, that she is required to pay utilities in accordance with the tenancy agreement, and the balance due of \$239.18 remains unpaid. Therefore, I award the Landlord **\$239.18** for utilities.

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:

Use and Occupancy up to August 31, 2012	\$1,150.00
Utilities	239.18
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,439.18
LESS: Security Deposit \$750.00 + Interest 14.13	<u>-764.13</u>
Offset amount due to the Landlord	<u>\$ 675.05</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **August 31, 2012, at 1:00 p.m.** This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$675.05**. 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: August 14, 2012.

Residential Tenancy Branch