



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 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, 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 parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's 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. Should the Landlord be granted an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The parties affirmed that they entered into a written fixed term tenancy agreement that began on November 1, 2011 and switched to a month to month tenancy agreement after April 30, 2012. Rent is payable on the first of each month in the amount of \$725.00 plus \$10.00 for parking. On October 14, 2011 the Tenant paid \$362.50 as the security deposit and \$200.00 as the pet deposit.

The Landlord submitted evidence which included, among other things, copies of: the 10 Day Notice, the tenancy agreement, and proof of service documents.

The Landlord confirmed that when August 1, 2012 rent was not paid they served a 10 Day Notice to the Tenant when it was posted to the door on August 2, 2012. The Tenant failed to pay September 1, 2012 rent on time however she did pay \$760.00 towards the August rent, parking, and late fees on September 10, 2012. A receipt was issued to the Tenant for use and occupancy only. The current outstanding balance due to the Landlord is \$730.00 which includes rent \$725.00 + \$10.00 parking less \$5.00 credit.

The Landlord is seeking the order of possession and a monetary order for \$730.00 + \$20.00 September 1, 2012 late fee.

The Tenant affirmed she paid August rent late, that she received a receipt for use and occupancy only, and she has not paid the September rent as she has been ill. She is requesting time to catch up on the past rent.

The Landlord's agents requested to proceed with their application as filed.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

Order of Possession - I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenant failed to pay the rent within 5 days after receiving this notice, and that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, **August 12, 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.

Claim for unpaid rent - The Landlord claims for unpaid rent, parking and late fees for August and September 2012, pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement.

The evidence supports the August rent, parking, and late fees have been paid by the Tenant September 10, 2012 leaving a \$5.00 credit balance. Therefore the unpaid rent has been paid in full and the Landlord's monetary claim for August is now moot.

Loss of rent – As noted above this tenancy ended **August 12, 2012**, in accordance with the 10 Day Notice therefore I find the Landlord is seeking loss of rent for September 1, 2012 given that the Tenant has failed to pay rent and is still occupying the unit.

Based on the aforementioned I find that the Landlord has succeeded in proving their loss, as listed above, and I approve their claim for **\$735.00** for loss of September 2012 rent and parking (\$725.00 + \$10.00).

Late Payment Fees. The Landlord is seeking \$20.00 for late payment fees for September 2012 in accordance with section 3 (a) of the tenancy agreement. This tenancy ended August 12, 2012, therefore the Landlord may not make a claim for late payment fees for September 2012, as this tenancy was no longer in effect at that time. Therefore I dismiss the Landlord's claim of \$25.00 for September 2012 late fees.

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

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

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

The Landlord has been awarded a Monetary Order for **\$785.00** (\$735.00 + \$50.00). 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: September 26, 2012.

Residential Tenancy Branch