



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MT, CNR

For the landlords – OPR, OPL, MNR, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for more time to cancel a Notice to End Tenancy and to cancel a 10 Day Notice to End Tenancy for unpaid rent. The landlords applied for an Order of Possession for unpaid rent and utilities; an Order of Possession for the landlords use of the property for a Monetary Order for unpaid rent or utilities; 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 cross examine each other on their evidence. The landlord and tenant 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.

Preliminary Issues

The tenant had five days to file her application to cancel the 10 Day Notice to End Tenancy. The Notice was served to the tenant in person on September 04, 2012. The tenant had five days from that date to file an application. The tenant did not file her application until September 14, 2012. The tenant did not have any extraordinary circumstances as required under s. 66(1) of the *Act*. Therefore, the tenant is

conclusively presumed to have accepted the end of the tenancy. The tenant's application is therefore dismissed without leave to reapply.

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 to recover unpaid rent?

Background and Evidence

The parties agree that this tenancy originally started on November 02, 2011. The tenant moved out on February 02, 2012 and the security deposit was returned to the tenant at this time. The tenant moved back into the unit on May 18, 2012. Rent for this unit was \$750.00 per month however the landlord reduced the rent to \$375.00 to help the tenant out. Rent is due on the 1st day of each month in advance.

The landlord testifies that the tenant owed a balance of rent from July of \$50.00. The tenant failed to pay any rent from August, September and October. The landlord seeks to recover the sum of \$1,175.00. The landlord testifies that the tenant did allow other people to live in the rental unit and was collecting rent from them so the tenants rent should have gone back to \$750.00 per month however the landlords will be happy to settle for \$375.00 per month. The landlord served the tenant with the 10 Day Notice in person on September 04, 2012. The Notice informed the tenant that the tenant had five days to either pay the rent for dispute the notice or the tenancy would end on September 14, 2012.

The landlord seeks an Order of Possession to take effect as soon as possible and seeks to recover their \$50.00 filing fee from the tenant.

The landlord has also applied for an Order of Possession for the landlords' use of the property after serving the tenant with a Two Month Notice to End Tenancy. However as

the landlord has been successful with his application gaining an Order of Possession for unpaid rent this section of the landlords claim has not been dealt with at the hearing today.

The tenant does not dispute that she owes rent for August, September and October, 2012. The tenant at first disputed the landlords claim for \$50.00 outstanding from July however after the landlord explained that there were rent and utility arrears for the previous two months and the amount the tenant and another person paid towards the rent and utilities left a \$50.00 balance of outstanding rent the tenant accepted the landlords claim that \$1,175.00 is outstanding for rent.

Analysis

Section 26 of the *Residential Tenancy Act (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 am satisfied with the undisputed evidence before me that the tenant has failed to pay rent for July of \$50.00 and for August, September and October of \$350.00 per month. The landlord is entitled to recover rent arrears to the sum of **\$1,175.00** pursuant to s.67 of the *Act*.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy pursuant to section 88 of the *Residential Tenancy Act*. The notice is deemed to have been received by the tenant on September 04, 2012. The Notice states that the tenant has 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 section 55 of the *Act*.

Conclusion

The tenant's application is dismissed without leave to reapply

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,225.00**. 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 landlords 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: October 24, 2012.

Residential Tenancy Branch