



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 repose 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*, sent via registered mail on September 28, 2012. Mail receipt numbers were provided by the landlord's agents in their sworn testimony. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agents appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant. All of the testimony and documentary evidence was carefully considered.

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?

Background and Evidence

The landlord testifies that this month to month tenancy started on April 01, 2006. Rent for this unit is \$719.00 per month and is due on the 1st of each month.

The landlords agent KM testifies that the tenant failed to pay rent for September, 2012 of \$719.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on September 12, 2012. This was posted to the tenants' door and was deemed to have been served three days after posting. This Notice states that the tenant owes rent of \$719.00 which was due on September 01, 2012. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on September 24, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has failed to pay rent for October 2012. The total amount of outstanding rent is now \$1,438.00. The landlord has requested to amend the application to include unpaid rent for October as the tenant continues to reside in the unit.

The landlord requests an Order of Possession to take effect as soon as possible and requests a Monetary Order to recover the outstanding rent and filing fee. The landlord has provided a copy of the 10 Day Notice, and the rent ledger in their documentary evidence.

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, as the tenant has failed to attend the hearing to dispute the landlords claim I find from the documentary evidence and testimony of the landlords agents that the tenant has failed to pay rent for September and October, 2012 and the landlord is entitled to recover these rent arrears. I have allowed the landlord to amend this

application to include unpaid rent for October, 2012 as the tenant continues to live in the rental unit and would be aware that rent is due on the first day of each month.

Consequently, the landlord will receive a Monetary Order to the sum of **\$1,438.00**.

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*.

As the landlord has been successful with this application the landlord is entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the sum of **\$1,488.00**.

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 **\$1,488.00**. 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 upon 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 30, 2012.

Residential Tenancy Branch