



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent, a monetary order for unpaid rent and an order to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he served the Tenant with the Application and Notice of Hearing by registered mail, sent on September 16, 2012. Under the Act the Tenant is deemed served five days later. I find the Tenant was duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The Landlord testified that the Tenant vacated the rental unit on October 2, 2012, and therefore, an order of possession is no longer required.

The Landlord testified that the Tenant failed to pay a utility bill, and also testified that the Tenant failed to return the keys for the rental unit. However, those claims were not on the Landlord's Application. I order that the Landlord may change the locks at the rental unit and allow the Landlord leave to apply for a monetary order for the cost of lock changes and for unpaid utilities.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to a monetary relief?

Background and Evidence

Based on the affirmed testimony of the Landlord, a 10 day Notice to End Tenancy was served in person to the Tenant's girlfriend on September 5, 2012. The Landlord testified that this person was an adult who apparently resides with the Tenant. I find the Tenant has been duly served under the Act.

The Tenant did not pay the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Although the Landlord is entitled to an order of possession in these circumstances, the Tenant has vacated the rental unit and therefore, an order of possession is no longer required.

I find that the Tenant failed to pay rent under the Act and tenancy agreement.

I find the Landlord has established a total monetary claim of **\$1,400.00** comprised of the September 2012 rent owed of \$1,350.00 and the \$50.00 fee paid by the Landlord for this application.

I find that the Landlord is still holding the security deposit of \$675.00 and has suffered a loss due to the breach of the Act and Tenancy Agreement by the Tenant. Under section 64 of the Act, I allow the Landlord to amend their claim to include a request to retain the security deposit. Furthermore, pursuant to section 72 of the Act, I allow the Landlord to retain the security deposit in partial satisfaction of the claim.

I order that the Landlord retain the deposit and interest of **\$675.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$725.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Landlord has leave to apply for further monetary orders.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy, and vacated the rental unit. Therefore, an Order of Possession is not required.

The Landlord is granted a monetary order for rent, may keep the security deposit in partial satisfaction of the claim, is granted an order for the balance due and has leave to apply for further monetary compensation.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 16, 2012.

Residential Tenancy Branch