



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD 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, to keep the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord affirmed that she personally served the female Tenant, T.G., with both Notices of Dispute Resolution hearing packages on September 12, 2012. She noted that the male Tenant, G.S. moved out of the rental unit sometime in July 2012. Based on the submissions of the Landlord I find the female Tenant T.G. to be sufficiently served notice of this proceeding and I continued in her absence.

Issue(s) to be Decided

1. Has the male Tenant been sufficiently served notice of this proceeding?
2. Should the Landlord be granted an Order of Possession?
3. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the 10 Day Notice, the tenancy agreement, copies of cheques received as payment on behalf of the Tenant, a receipt dated September 12, 2012 stating for use and occupancy only, and a hand written statement signed by the Tenant and Landlord acknowledging that payment would not reinstate the tenancy.

The parties entered into a fixed term tenancy that began on June 1, 2012 and is set to switch to a month to month tenancy after July 1, 2013. Rent is payable on the first of each month in the amount of \$700.00 plus laundry of \$10.00 per month. On May 23, 2012 the Tenant paid \$350.00 as the security deposit.

The Landlord confirmed that when September 1, 2012 rent was not paid they served a 10 Day Notice to the Tenant when it was posted to the door on September 2, 2012. The Tenant failed to pay September 1, 2012 rent on time however she did provide two cheques totalling \$675.00 (\$300.00 + \$375.00) to the Landlord on September 12, 2012

which left an outstanding balance due of \$35.00. (\$700.00 rent + \$10.00 laundry - \$675.00). A receipt was issued to the Tenant for use and occupancy only.

The Landlord stated that she received a payment from Income Assistance on September 27, 2012 for October 2012 occupancy. She stated she provided the Tenant with another receipt for use and occupancy only and informed the Tenant she would be proceeding with the eviction.

The Landlord submitted that the Tenant told her she could not afford to pay the outstanding balance and she could not afford to pay her hydro bill since her roommate moved out. The Landlord said she wished to proceed with their request for an Order of Possession effective October 31, 2012 and a monetary order for the outstanding \$35.00.

Analysis

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlord has applied for a monetary Order which requires that the Landlord serve each respondent as set out under *Residential Tenancy Rules of Procedures*.

In this case only one of the two Tenants, the female Tenant T.G., has been personally served with the Notice of Dispute Resolution Proceeding documents. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the Female Tenant, T.G., who has been properly served with Notice of this Proceeding. As the second Tenant, G.S. has not been properly served the Application for Dispute Resolution as required; the claim against Tenant G.S. is dismissed without leave to reapply.

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 in full 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, **September 15, 2012** and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*.

A payment was received September 27, 2012 for October 2012 use and occupancy only. Accordingly, I approve the Landlord's request for an Order of Possession effective October 31, 2012.

Claim for unpaid rent - The Landlord claims for unpaid rent accumulated from September 2012, pursuant to section 26 of the *Act* that stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement.

The evidence supports that payments totaling \$675.00, for use and occupancy only, were received on September 12, 2012 leaving a balance owing of \$35.00. Accordingly I award the Landlord a monetary order for **\$35.00**.

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:

Unpaid Rent from September 2012	\$ 35.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 85.00
LESS: Security Deposit \$350.00 + Interest 0.00	<u>-350.00</u>
Offset amount of Deposit	<u>(\$265.00)</u>

Conclusion

The claim against Tenant G.S. is HEREBY DISMISSED, without leave to reapply.

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **October 31, 2012 after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord may withhold the monetary award of **\$85.00** from the Tenant's security deposit. The remaining deposit of \$265.00 is to be held in trust by the Landlord and administered in accordance with Section 38 of the *Residential Tenancy Act*.

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 02, 2012.

Residential Tenancy Branch