



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent, a monetary order for unpaid rent, authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss, and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The landlord testified that the tenant was served with the Notice on August 29, 2012 at 5:30 p.m. in person at the rental unit. The landlord provided a written statement from a witness who indicates that she witnessed the landlord serve the tenant in person on August 29, 2012 with the Notice. Based on the undisputed testimony of the landlord, I find that the tenant was served in accordance with the *Act*.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent, or for money owed or compensation under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that a month to month tenancy agreement began on May 15, 2012. Rent in the amount of \$850.00 is due on the first day of each month. The tenant paid \$425.00 as a security deposit at the start of the tenancy.

The landlord served a 10 Day Notice for Unpaid Rent or Utilities (the “10 Day Notice”) dated August 15, 2012, however, failed to sign the 10 Day Notice. The 10 Day Notice states that the tenant failed to pay \$1,700.00 due on August 1, 2012.

The landlord confirmed that the tenant continues to occupy the rental unit and has failed to pay rent for September 2012. As the date of this Decision is October 1, 2012, the tenant has until midnight tonight to pay rent for October 2012. As a result, October 2012 rent is not being considered in this Decision.

The landlord confirmed that he has not received any rent from the tenant for the months of July, August, or September 2012. At \$850.00 per month, the tenant owes rent in the amount of \$2,550.00. The landlord is also seeking to recover the cost of the filing fee of \$50.00.

Analysis

Order of possession – Section 52 of the *Act* sets out the form and content of a Notice to End Tenancy. Section 52 of the *Act* reads:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) **be signed** and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

[emphasis added]

As the landlord failed to sign the 10 Day Notice, **I find** the 10 Day Notice is invalid under the *Act* and, therefore, **I cancel** the 10 Day Notice. I **do not** grant the landlord an order of possession as a result.

Claim for unpaid rent– Based on the undisputed testimony of the landlord, **I find** that the tenant has not paid rent for the months of July, August or September 2012. Therefore, the landlord has established a monetary claim in the amount of **\$2,550.00**. The landlord is holding a security deposit of \$425.00 which was paid by the tenant at the start of the tenancy and has accrued no interest to date.

As the landlord's claim had merit, **I grant** the landlord recovery of the **\$50.00** filing fee.

Monetary Order – **I find** that the landlord has established a total monetary claim in the amount of **\$2,600.00** consisting of \$2,550.00 in unpaid rent and the \$50.00 filing fee. This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit of \$425.00. Therefore, **I authorize** the landlord to retain the tenant's full security deposit of \$425.00 in partial satisfaction of the monetary claim and **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing in the amount of **\$2,175.00**

Conclusion

I dismiss the landlord's request for an order of possession due to the landlord failing to sign the 10 Day Notice.

I find that the landlord has established a total monetary claim of **\$2,600.00**. I authorize the landlord to retain the full security deposit of \$425.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$2,175.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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 *Residential Tenancy Act*.

Dated: October 01, 2012

Residential Tenancy Branch