



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 concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord and an observer attended the conference call hearing, and the agent gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on October 25, 2012 the tenant did not attend. The landlord's agent provided evidence of having served the tenant on that date and in that manner, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and the testimony of the landlord's agent have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on January 1, 1993 and the tenant still resides in the rental unit. Rent in the amount of \$320.00 per month is payable in advance on the 1st day of each month. No security deposit or pet damage deposit have been collected by the landlord.

The landlord's agent further testified that the tenant has been in arrears of rent since July, 2011. During that month the tenant paid the landlord \$160.00, leaving a balance outstanding of \$160.00. The tenant further failed to pay rent in full for the month of October, 2011, paying the landlord \$140.00 and leaving a balance outstanding for that

month in the amount of \$180.00. The tenant paid rent in full for the month of November, 2011, however the personal cheque of the tenant was returned by the financial institution for insufficient funds. The landlord claims \$20.00 for an N.S.F. fee but the landlord's agent agreed that the tenancy agreement is silent with respect to late or N.S.F. fees. The landlord has another agreement with the tenant in place, but that document has not been provided for this hearing. Further, the tenant has not paid any rent for the month of December, 2011.

The landlord's agent testified that a notice to end tenancy was not issued in December, 2011 because the landlord's agents were working with the tenant in an effort to salvage the tenancy. The efforts were not successful, and as a result, the landlord's agent caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on September 14, 2012. A copy of the notice was provided for this hearing, and it is dated September 14, 2012 and contains an expected date of vacancy of September 27, 2012.

The landlord's agent testified that the landlord has attempted to settle this dispute with the tenant by suggesting a payment schedule, but the tenant has not agreed to the schedule, and the tenant has not served the landlord with an application for dispute resolution.

The landlord claims an Order of Possession and a monetary order for unpaid rent in the amount of \$660.00 in addition to the \$50.00 filing fee for the cost of the application.

Analysis

The *Residential Tenancy Act* provides for a landlord to serve a tenant on any day after the date that rent is payable under the tenancy agreement with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once served, the tenant has 5 days to pay the rent in full or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the rent in full or apply for dispute resolution within that 5 day period, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out by that date, which must be no earlier than 10 days after the tenant is served, or deemed served with the landlord's notice.

In this case, I find that the tenant was deemed served with the notice to end tenancy on September 17, 2012, being 3 days after the notice was posted to the door of the rental unit. I further find that the tenant has failed to pay the rent or dispute the notice within 5 days and is therefore conclusively presumed to have accepted the end of the tenancy. I

hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

With respect to the monetary order, I do not accept the N.S.F. or any late fees that the landlord has claimed because the regulations to the *Residential Tenancy Act* provide for late fees if they are contained in the tenancy agreement and N.S.F. fees equal to the amount that the landlord is charged by their financial institution. The landlord has not proven either fee.

However, I accept the testimony of the landlord that the tenant is in arrears of rent the sum of \$660.00 and I grant the landlord a monetary order for the unpaid rent. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$710.00.

This order is final and binding on the parties and may be enforced.

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: November 28, 2012.

Residential Tenancy Branch