



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 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, and to recover the filing fee.

The landlord and tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were 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.

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?

Background and Evidence

The parties agreed that a month to month tenancy agreement began on April 1, 2012. Rent was due on the first day of each month in the amount of \$650.00. The tenant paid \$325.00 as a security deposit. The tenant requested the landlord to use the security deposit towards earlier unpaid rent prior to this hearing, which the landlord agreed to.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "Notice") dated October 3, 2012, by posting on the tenant's door on the same date and with an effective date of October 7, 2012. The effective date corrects under the *Act* to October 10, 2012. The tenant stated that she could not recall the date she received the Notice.

The landlord is seeking \$1,425.00 comprised of \$125.00 owing for September 2012 rent, \$650.00 for October 2012 rent, and \$650.00 for November 2012 rent. The tenant agrees that she did not dispute the Notice or pay the full rent as required. The tenant also agreed that \$1,425.00 remains owing to the landlord for unpaid rent.

The landlord provided a copy of the Notice as evidence for this proceeding.

Analysis

Order of possession - I find that the tenant failed to pay the rent or dispute the Notice within 5 days after receiving the Notice, and that the tenant is conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ends on the corrected effective date of the Notice. Accordingly, **I grant** the landlord an order of possession.

Claim for unpaid rent – The landlord testified that \$1,425.00 remains owing in unpaid rent for the months of September, October and November 2012. The parties agree that the security deposit has already been used by the landlord towards earlier unpaid rent resulting in a security deposit balance of \$0.00.

Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, **I find** that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenant continues to occupy the unit. The landlord will not regain possession of the unit until after service of the order of possession and has not received the full amount of rent for September 2012 or any rent for October and November 2012. **I find** the landlord has met the burden of proof and **I award** the landlord a monetary amount of **\$1,425.00** as described below.

As the landlord has succeeded with her application, **I grant** the landlord the recovery of the **\$50.00** filing fee.

Monetary Order – I grant the landlord a monetary order in the amount of **\$1,475.00** pursuant to section 67 of the *Act* comprised of \$1,425.00 in unpaid rent and the \$50.00 filing fee.

Conclusion

I find that the landlord has proven her claim and is, therefore, entitled to an order of possession effective **two days** after service upon the tenant.

I find that the landlord has established a total monetary claim of \$1,475.00. 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: November 16, 2012

Residential Tenancy Branch