



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 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, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed the Tenant was served notice of this proceeding on October 3, 2012 by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant was served sufficient notice of this proceeding so I continued in the Tenant's absence.

Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord advised that the Tenant entered into a verbal month to month tenancy agreement that began on April 1, 2011. Rent is payable on the first of each month in the amount of \$675.00. On or before April 1, 2011, the Tenant paid \$337.50 as the security deposit.

The Landlord submitted evidence which included, among other things, copies of: a 10 Day Notice to end tenancy for unpaid rent, a shelter information form, and a proof of service document.

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 Tenant's door on September 11, 2012 at 1:30 p.m. The Landlord advised that even though the Tenant was served several Notices in past months she continues to reside in the unit.

The Landlord acknowledged receiving two payments from Income Assistance on October 20, 2012. One was for \$100.00 and the other was for \$565.00 and both payments were for October 2012 rent. During the hearing I had the Landlord read the cheque stub received with these payments and confirmed they were issued for the month of October 2012.

The Landlord is seeking an order of possession and a monetary order for \$675.00.

Analysis

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*. The Tenant failed to pay the rent within 5 days after receiving this notice and did not file to dispute the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, **September 24, 2012** and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

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

The undisputed evidence supports the September 2012 rent remains unpaid. Accordingly, I approve the Landlord's request for a monetary order for **\$675.00**.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

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

The Landlord has been awarded a Monetary Order for **\$725.00** (\$675.00 + \$50.00). This Order is legally binding and must be served upon the Tenant.

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 05, 2012.

Residential Tenancy Branch