



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 all or part of the pet and or security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that he served the Tenant with his Application for Dispute Resolution and notice of hearing documents on October 6, 2012 by registered mail. Canada Post tracking information was provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding in accordance with Section 89 of the Act and I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Should the Landlord be issued an Order of Possession?
2. Should the Landlord be issued a Monetary Order?

Background and Evidence

The Landlord stated he entered into a verbal month to month tenancy with the Tenant that began on August 1, 2012. Rent is payable on the first of each month in the amount of \$900.00 and on August 1, 2012 the Tenant paid \$450.00 as the security deposit.

The Landlord referenced the 10 Day Notice which he provided in his evidence and advised that the Tenant owes \$350.00 for September 2012 rent, and all of October and November 2012 rent. When asked why \$950.00 is list on the 10 Day Notice for the amount due the Landlord stated that is the amount that was owing at the time he issued the Notice.

The Landlord later submitted that the Tenant paid August rent in full on August 3, 2012, and he paid \$600.00 towards September 2012 rent but it was late. The Landlord was not able to provide testimony as to how he determined the \$950.00 which is listed on the 10 Day Notice nor could he provide an exact date of when the \$600.00 was paid in September. He noted that nothing has been paid since issuing the Tenant the 10 Day Notice which was posted to the Tenant's door on September 15, 2012.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

In this case the Notice was posted to the Tenant's door on September 15, 2012 and is deemed to have been received by September 18, 2012. Since the Tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on **September 28, 2012** and the Landlord is entitled to regain possession of the rental unit. Accordingly, I award the Landlord an Order of Possession effective two (2) days after service upon the Tenant.

Based upon the Landlord's submission I find there to be insufficient evidence to prove the actual amount owed for rent. Therefore the Landlord's claim for unpaid rent is dismissed.

The Landlord has been partially successful with his application; therefore I award partial recovery of the filing fee in the amount of **\$25.00** which may be withheld from the \$450.00 security deposit currently held in trust by the Landlord.

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 may withhold the one time award of \$25.00 from the Tenant's security deposit.

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 06, 2012.

Residential Tenancy Branch