



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 in repose to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on October 26, 2012. Mail receipt numbers were provided by the landlord's agent in evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?

Background and Evidence

The landlord's agent testifies that this fixed term tenancy started on December 16, 2011. Rent for this unit is \$2,500.00 per month and is due on the 16th of each month. The fixed term ended on January 16, 2012 and then reverted to a month to month tenancy.

The landlord testifies that the tenant failed to pay rent for September, 2012 of \$900.00 and for October of \$2,500.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on October 16, 2012. This was handed to the tenant in person. This Notice states that the tenant owes rent of \$2,500.00 which was due on October 14, 2012. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on October 26, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant failed to pay rent for November 2012 of \$2,500.00 on the day it was due. The tenant has however paid \$1,100.00 on November 08, 2012 and \$2,500.00 on November 14, 2012. The total amount of outstanding rent is now \$2,300.00.

The landlord requests an Order of Possession effective on January 16, 2013 and seeks a Monetary Order to recover rent and the filing fee. The landlord withdrew the remainder of the monetary claim.

Analysis

Section 26 of the *Residential Tenancy Act (Act)* states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, as the tenant has failed to attend the hearing to dispute the landlords claim I find from the documentary evidence and testimony of the landlord's agent that the tenant owes the sum of **\$2,300.00** and the landlord is entitled to recover these rent arrears.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

I find the landlord is entitled to recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the *Act*. Consequently, the landlord will receive a Monetary Order to the sum of **\$2,400.00**.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,400.00**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **on January 16, 2013**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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 29, 2012.

Residential Tenancy Branch