



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

The Landlord affirmed that on November, 4, 2012 she served the Tenant with copies of her application, the 10 Day Notice, and the notice of dispute resolution hearing documents by registered mail. Registered mail tracking information was provided in the Landlord's oral testimony. The Tenant was served a second package on November 25, 2012 which included the Landlord's amended application and the remaining evidence which included the tenancy agreement and tenant ledger (RW722693475CA).

Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding in accordance the *Act* and I continued 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 submitted documentary evidence which included, among other things, copies of: 10 Day Notice issued October 19, 2012; the tenancy agreement; the tenant ledger; and registered mail receipts.

The Tenant entered into a fixed term tenancy agreement with the previous managers that began on July 1, 2011. Rent was originally payable on the first of each month in

the amount of \$790.00 but was raised to \$810.00 effective September 1, 2012. On June 17, 2011 the Tenant paid \$395.00 as the security deposit.

The Landlord stated that they took over management of this building on October 15, 2012 and that the initial paperwork indicated the last payment received from this Tenant was September 30, 2012 leaving a balance of \$510.00. This was the amount listed on the 10 Day Notice which was posted to the Tenant's door on October 19, 2012. It was later determined that the Tenant owed for the full month of October at \$810.00.

The Landlord explained that the Tenant had told them she would pay October and November 2012 rent by November 30, 2012 however, she did not. At this point the Tenant continues to live in the rental unit and has not paid anything towards October, November and December 2012 rent. The Landlord seeks an Order of Possession for as soon as possible and a Monetary Order for October and November 2012 unpaid rent.

Analysis

After careful consideration of the aforementioned, I accept the undisputed evidence that the Tenant has failed to pay rent for October, November, and December, 2012, and continues to occupy the rental property.

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*, that the Tenant failed to pay the rent within 5 days after receiving this notice, and that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must vacate the rental unit, 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 of \$1,620.00 (2 x \$810.00) which is comprised of rent for October and November, 2012, pursuant to section 26 of the *Act* that stipulates that a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the aforementioned, 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. Accordingly, I award the Landlord a monetary claim of **\$1,620.00** for unpaid rent.

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

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid rent for October & November 2012	\$1,620.00
Filing Fee	<u>50.00</u>
SUBTOTAL	<u>\$1,670.00</u>
LESS: Security Deposit \$395.00 + Interest 0.00	<u>-395.00</u>
Offset amount due to the Landlord	<u>\$1,275.00</u>

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 in the amount of **\$1,275.00**. 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: December 06, 2012.

Residential Tenancy Branch