



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 or utilities 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 that he personally served the Tenant with copies of his Application for Dispute Resolution and the Notice of Hearing documents on November 21, 2012 at the rental unit. Based on the submissions of the Landlord I find the Tenant was sufficiently served Notice of this proceeding so I continued in his absence.

Issue(s) to be Decided

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

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a 10 Day Notice dated November 3, 2012, and the tenancy agreement.

The parties entered into a month to month tenancy that began on September 1, 2011 for the monthly rent of \$650.00.

The Landlord stated that when the Tenant failed to pay the October and November rent he posted a 10 Day Notice to end tenancy to the Tenant's door on November 3, 2012. He advised the Tenant is always late with the rent so he served him with a 1 Month Notice to end tenancy that same day.

The Tenant has made payments towards the outstanding rent as follows: November 3, 2012 he paid the \$650.00 October 2012 rent; on November 23, 2012, twenty days after the 10 Day Notice was posted to his door and two days after receiving the Landlord's hearing documents, he paid \$680.00 which included \$650.00 for November rent and

\$30.00 towards the filing fee; and on December 2, 2012 the Tenant paid \$350.00 towards the December 2012 rent. The Tenant remains in the unit and owes the balance of the filing fee and \$300.00 towards December rent.

The Landlord submitted that he informed the Tenant of his intention to follow through with this eviction which is why he served the Tenant the 1 Month Notice in addition to the 10 Day Notice.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant did not dispute the Notice and he made payments throughout the month. The Tenant did not pay the full amount due for November 2012 rent until November 23, 2012, after the five day time period. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, **November 18, 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.

The Landlord claimed unpaid rent of \$700.00 which included \$650.00 for November 1, 2012 rent plus the \$50.00 filing fee. In this case the Tenant made payments towards the arrears paying the rent in full by November 23, 2012, after the effective date of the 10 Day Notice. I accept the Landlord's submission that he informed the Tenant of his intent to move forward with the eviction. Therefore the payments were received for rent and use and occupancy only and did not reinstate the tenancy.

Based on the aforementioned, I find the Landlord's claim for November 2012 unpaid rent to be fully satisfied by the Tenant's payments and no monetary award is warranted.

The Landlord has succeeded with their application; therefore I award recovery of the \$50.00 filing fee. The Tenant has made a payment towards this award of \$30.00 leaving a balance due to the Landlord of **\$20.00**.

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 (2) Days after service upon the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order to recover the balance due for the filing fee of **\$20.00**.

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 27, 2012.
