



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail on December 28, 2012 in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began in June or July 2012. Rent in the amount of \$795.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$397.50. The Tenant owed rental arrears and failed to pay rent for December 2012 and on December 4, 2012 the Landlord personally served the Tenant with a notice to end tenancy for unpaid rent.

The Landlord states that he does not know when the Tenant vacated the unit and last saw the Tenant a month ago. No keys to the unit were returned and the Tenant's neighbour told the Landlord yesterday that the Tenant had moved out a while ago. The Landlord states that mail is delivered directly to the unit and upon checking the unit today, no registered mail package that had been mailed on December 28, 2012 was present. The Tenant did not make an application for dispute resolution. The Landlord claims the arrears of \$3,573.00 and January 2013 rent. No Order of Possession is required.

Analysis

Section 44 of the Act sets out when a tenancy will end. Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended pursuant to section 44. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. The Landlord in this case has elected to end the tenancy agreement for non-payment of rent by serving a 10 day notice to end tenancy with a move-out date of December 15, 2012. As such, the Tenant is liable for rent to that date or until the Landlord regains possession. Since the Landlord does not know when the Tenant left the unit but accepting that the registered mail hearing package was not in the unit as of today's date and that the neighbour saw the Tenant leave a while ago, I find that the Landlord has substantiated on a balance of probabilities that the Tenant remained in the unit to the end of December 2012 and at least into the first week of January 2013. I therefore find that the Landlord is entitled to rental arrears including December 2012 rent in the amount of **\$3,573.00** and a week of rent for January 2013 in the amount of **\$198.75**.

The Landlord is also entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$3,821.75**. Setting the security deposit of **\$397.50** plus zero interest off the entitlement leaves the amount of **\$3,424.25** owing by the Tenant to the Landlord.

Conclusion

I **order** that the Landlord retain the **deposit** and interest of \$397.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$3,424.25**. If necessary, this order may be filed in the Small Claims 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: January 24, 2013

Residential Tenancy Branch

