



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 paid for 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 January 03, 2013. Mail receipt numbers were provided in the landlord's documentary 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 landlord 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 testifies that this month to month tenancy started in May 01, 2011. Rent for this unit is \$1,000.00 per month and is due on the 1st of each month.

The landlord testifies that the tenant only paid \$700.00 in rent for December, 2012 leaving an unpaid balance of \$300.00. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on December 18, 2012. This was posted to the tenant's door and was deemed to have been served three days after posting. This Notice states that the tenant owes rent of \$1,300.00 which was due on December 01, 2012. The landlord testifies that this included unpaid rent for January, 2013. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on December 28, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has failed to pay rent for January, 2013 of \$1,000.00. The total amount of outstanding rent is now \$1,300.00. The landlord has amended the application to include unpaid rent for February, 2013 of \$1,000.00 as the landlord testifies that it is unlikely the rental unit will be re-rented for February, 2013.

The landlord requests an Order of Possession to take effect as soon as possible; a Monetary Order for \$2,300.00 and to recover the \$50.00 filing fee.

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 landlord's claim I find from the documentary evidence and testimony of the landlord that the tenant

has failed to pay rent for December, 2012 and January 2013. The landlord is therefore entitled to recover the rent arrears to the sum of **\$1,300.00**.

I have considered the landlords claim for unpaid rent or loss of rent for February, 2013. The Residential Tenancy Policy Guidelines #3 states

In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

With this in mind a landlord must also show what attempts are made to mitigate or minimize the loss by attempting to re-rent the rental unit for February as a landlord may still be able to find a new tenant for all or part of that month. Consequently, I limit the landlords claim for loss of rental income from February 01 to February 15, 2013 to the sum of **\$500.00**. The landlord is at liberty to file a new application against the tenant if the unit remains unrented for the remainder of February, 2013.

The landlord is entitled to recover the filing fee of \$50.00. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* for the following sum:

Unpaid rent for December and January	\$1,300.00
Loss of rent for February	\$500.00
Filing fee	\$50.00
Total amount due to the landlord	\$1,850.00

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*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,850.00**. 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 **two days after service upon the tenant**. 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: January 28, 2013

Residential Tenancy Branch

