



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent, and the filing fee. The landlord also applied to retain the security deposit in satisfaction of his claim. The notice of hearing was served on the tenant in person, on January 05, 2013. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

During the hearing, the landlord requested that his application to retain the security deposit be dismissed with leave to reapply. Since the tenant is currently in occupation of the rental unit, I allow the landlord's request

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order to recover unpaid rent and the filing fee?

Background and Evidence

The tenancy started on May 01, 2008. The rent is \$1,500.00 due on the first of the month and does not include utilities. The tenant failed to pay rent and utilities. On December 07, 2012, the landlord served the tenant with a ten day notice to end tenancy for \$3,944.00 in unpaid rent and utilities.

On December 15, 2012, after having received the notice to end tenancy, the tenant wrote a note acknowledging that she owed the landlord \$3,944.00. The landlord stated that the tenant made payment in installments on December 20, January 05, 11 and 28 for a total of \$3,250.00. As of the date of the hearing, the tenant had not caught up on rent and in addition owed rent for January plus utilities.

The landlord provided a breakdown of the utilities owed in the amount of \$457.55. Overall the tenant owed \$2,651.65 which included the balance of the amount owed as per the notice to end tenancy, rent for January plus utilities. The landlord is applying for an order of possession effective two days after service on the tenant and a monetary order for \$2,651.65 for unpaid rent and utilities plus the filing fee of \$100.00.

Analysis

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on December 07, 2012 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord is entitled to \$2,651.65 for unpaid rent and utilities. The landlord made a premature application for rent for the months of February and March 2013 which required him to pay a filing fee of \$100.00. If the landlord had applied for his current claim, he would have paid a filing fee of \$50.00. Therefore I find that the landlord is entitled to \$50.00 towards the filing fee.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount due of \$2,701.65. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order in the amount of **\$2,701.65**.

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 29, 2013

Residential Tenancy Branch

