



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 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 for compensation for loss or damage and to retain the security deposit in partial satisfaction of his monetary claim.

At the start of the hearing, the landlord requested that his application for compensation for loss or damage be dismissed with leave to reapply. Since the tenant is currently occupying the rental unit, I grant the landlord's request and dismiss this portion of the landlord's application with leave to reapply.

The notice of hearing was served on the tenant on October 24, 2012 by registered mail. The landlord filed a copy of the tracking slip. 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.

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, the filing fee and to retain the security deposit?

Background and Evidence

The tenancy started on February 01, 2011. The rent is \$985.00 due in advance on the first of each month. Prior to moving in the tenant paid a security deposit of \$482.50.

The landlord testified that the tenant failed to pay rent for October. On October 10, 2012, the landlord served the tenant with a ten day notice to end tenancy. The tenant did not dispute the notice and continued to occupy the rental unit. The tenant made a partial payment and the landlord accepted the payment for use and occupancy only. Again, for November, the tenant made partial payments. As of the date of the hearing, the tenant owed \$635.00 in outstanding rent.

The landlord is applying for an order of possession effective two days after service on the tenant and for a monetary order in the amount of \$635.00 which consists of unpaid rent. The landlord is also applying for \$50.00 for the filing fee and to retain the security deposit of \$482.50 in partial satisfaction of his claim.

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 October 10, 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 \$635.00 for unpaid rent. Since the landlord has proven his case, he is also entitled to the recovery of the filing fee of \$50.00.

I order that the landlord retain the security of \$482.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$202.50. 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 **\$202.50**.

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: November 27, 2012.

Residential Tenancy Branch

