



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by requesting payment of \$500.00 for April 2013 on their original application

Based on the aforementioned I find the Landlord's intention of seeking to recover the payment for use and occupancy or loss of rent, for a period after the tenancy ended in accordance with the 10 Day Notice, was an oversight and/or clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application. Therefore I amended their application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security deposit; and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that the Tenant was personally served with copies of the Notice of dispute resolution hearing package on March 4, 2013, at the rental unit in the presence of a witness. Based on the submissions of the Landlord I find the Tenant was served notice of this proceeding, in accordance with the Act and I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included a copy of the 10 Day Notice to end tenancy for unpaid rent issued March 4, 2013.

The Landlord stated that the parties entered into a verbal month to month tenancy agreement that began on October 1, 2012. Rent is payable on the first of each month in the amount of \$500.00 per month and the Tenant has failed to pay anything towards the security deposit. The Landlord affirmed that she was instructed by the *Residential Tenancy Branch* staff to request the return of the deposit just in case the Tenant paid it before the hearing.

The Landlord testified that when the Tenant failed to pay the \$90.00 accumulated from January and February, and the March 1, 2013, rent of \$500.00 a 10 Day Notice was personally served to the Tenant on March 4, 2013. The Tenant has not paid the arrears and has not paid anything for April 2013 rent and he continues to reside inside the unit. They are seeking to regain possession of the unit as soon as possible and be granted a Monetary Order.

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 received the 10 Day Notice on March 4, 2013, and the effective date of the Notice is **March 14, 2013**, in accordance with the Act. The Tenant did not pay the rent and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice 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 \$590.00 which was due March 1, 2013 and consisted of \$60.00 owing from January 2013, \$30.00 for February 2013, plus \$500.00 for March 2013. The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent up to March 1, 2013, of **\$590.00**.

As noted above this tenancy ended **March 14, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for April 2013, not rent. The Tenant continues to occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of April 2013, in the amount of **\$500.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

The Tenant did not pay a security deposit; therefore, I dismiss the Landlord's claim to keep the deposit.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$1,140.00** (\$590.00 + \$500.00 + \$50.00). This Order is legally binding and must be served upon the Tenant.

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: April 11, 2013

Residential Tenancy Branch