



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OP MNR MNSD FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Background and Evidence

This tenancy began in 2008. The rent is \$850.00 due in advance on the first day of each month. The landlord has misplaced her copy of the tenancy agreement. She was unsure of the amount of the security deposit. The tenant did not pay rent for October when it was due. On October 24, 2013 the landlord served the tenant with a Notice to End Tenancy for non-payment of rent. The tenant acknowledged receipt of the Notice, but he disputed the amount of rent, including arrears that was said to be due. At the hearing the parties agreed that as of September 30, 2013 there was \$3,800.00 owed for rent. No rent has been paid for October, November and December and therefore, as of the date of the hearing there is a further sum of \$2,550.00 due for rent, including the rent for December. The landlord requested an immediate order for possession and a monetary order for the unpaid rent, including the filing fee. The tenant did not dispute the landlord's claims. He said he is waiting for a shipment to arrive and he will then be in a position to pay the outstanding rent. He intends to move at the end of December. He also agreed to locate and remove the source of an objectionable smell that is bothering the landlord.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order - I find that the landlord has established a total monetary claim of \$6,350.00 for the outstanding rent up to and including December. The landlord is entitled to recover the \$100.00 filing fee for this application for a total award of \$6,450.00. In light of the uncertainty as to the precise amount of the security deposit, I make no order with respect to it. The parties will have to deal with the deposit in accordance with the *Residential Tenancy Act* when the tenant moves out of the rental unit. I grant the landlord an order under section 67 for the balance due of \$6,450.00. 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: December 09, 2013

Residential Tenancy Branch

