



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing and was represented by an agent who gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on September 20, 2014, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the landlord and the landlord's agent. The landlord's agent testified that the tenant was served on that date and in that manner and has provided a copy of the receipt issued by Canada Post and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that this rental unit was originally rented to a tenant not named in this application about 10 years ago, and the landlord collected a security deposit in the amount of \$375.00 which is still held in trust by the landlord. A new tenant moved in with the original tenant about 2 years ago and a new tenancy agreement was prepared showing that each of the tenants were to pay \$375.00 per month for rent payable on the 1st day of each month. The original tenant has continuously paid rent, however the tenant named in this dispute failed to pay rent when it was due for September, 2014.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 2, 2014 by posting it to the door of the rental unit. A copy of the notice has been provided and it is dated September 2, 2014 and contains an expected date of vacancy of September 12, 2014 for unpaid rent in the amount of \$375.00 that was due on September 1, 2014. The tenant has not paid the rent and now arrears have accumulated for October and November, 2014 and the tenant currently owes the landlord \$1,125.00.

The landlord and the original tenant both want an Order of Possession so the locks can be changed and the original tenant can get another roommate. The landlord is content with the original tenant remaining in the rental unit.

The landlord was permitted to send to me a copy of the tenancy agreement after the hearing had concluded, however the copy received does not contain a signature of the tenant.

Analysis

I am satisfied in the testimony that the tenant has a tenancy with the landlord by virtue of having paid rent directly to the landlord as opposed to the original tenant. I also find that the landlord has the right to retain one tenant who is paying rent.

I am also satisfied that the landlord has served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities addressed to the tenant only, and not the original tenant. I find that the notice is deemed to have been served on September 5, 2014. The *Residential Tenancy Act* states that once served with the notice, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out 10

days after service of the notice. The tenant has not moved out, has not paid the rent and I therefore find that the landlord is entitled under the *Act* to an Order of Possession.

With respect to the monetary order, I am satisfied that the landlord has established a claim for unpaid rent in the amount of \$375.00 for September and \$375.00 for October, 2014. I am not satisfied however that the landlord has established that a new tenant could not be obtained by the 15th of November, and therefore I grant an order for half of the month.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to section 67 of the *Residential Tenancy Act* in the amount of \$987.50.

These orders are final and binding and may be enforced.

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 10, 2014

Residential Tenancy Branch

