



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy – Section 46.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order to retain the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Hearing started at its scheduled time of 10:30 am and the Tenant did not appear within 10 minutes of this start time. As the Tenant did not participate in the hearing to pursue its application, the Tenant’s application is dismissed. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail on October 31, 2014 in accordance with Section 89 of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on May 15, 2011. Rent of \$795.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$397.50 as a security deposit.

The Tenant failed to pay rent for October 2014 and on October 12, 2014 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door. The Landlord was informed during the first week of November 2014 by the tenants above the rental unit that the Tenant had moved out of the unit around November 1, 2014. No keys to the unit were returned and some articles were left in the unit. The Landlord did not take possession of the unit as they were concerned that without the order of possession they could not take legal possession although they believed that the unit was abandoned. The Landlord did not seek any information from the Residential Tenancy Branch about its right to possession of a unit upon it being abandoned. The Landlord has not advertised the unit for rent as of yet as it was waiting for the order of possession.

The Landlord claims unpaid rent for October, November and December 2014.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") 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. Based on the Landlord's evidence I find that the Tenant was given a valid Notice, deemed to have been received on October 15, 2014. The Tenant's application to dispute the Notice has been dismissed and the Tenant has not paid the outstanding rent. Given these facts, I find that the

Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for unpaid October 2014 rent. As the Tenant also did not return the keys to the unit and left items in the unit, but considering that the Landlord made no effort after learning that the Tenant had moved out of the unit to re-rent the unit, I find that the Landlord is only entitled to a half portion of the November 2014 rent for a total amount of **\$1,192.50** (\$795.00 + 397.50) in unpaid rent. The Landlord is entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$1,242.50**. Setting the security deposit of **\$397.50** plus zero interest off the entitlement leaves **\$845.00** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord effective immediately.

I order that the Landlord retain the **deposit** and interest of \$397.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$845.00**. If necessary, 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 01, 2014

Residential Tenancy Branch