



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order and an application by the tenant for an order setting aside a notice to end this tenancy. Despite having been personally served with a copy of the landlord's application for dispute resolution and notice of hearing on November 13, the tenant did not participate in the conference call hearing.

As the tenant did not appear at the hearing to advance her claim, her application is dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord's undisputed evidence is as follows. The tenancy began on September 1, 2014 at which time the tenant paid a \$425.00 security deposit. Rent was set at \$850.00 per month. The tenant's rent cheque for the month of October was returned for insufficient funds and she failed to pay rent in the month November. On November 6, the landlord served her with a 10 day notice to end tenancy for unpaid rent (the "Notice").

The landlord seeks a monetary order for unpaid rent for October and November, loss of income for December and an order of possession. The landlord did not submit a copy of the Notice and at the hearing, I advised that I could not grant him an order of possession unless he submitted a copy of the Notice for my scrutiny. I told the landlord that I would give him 24 hours from the time of the hearing to submit the Notice. The landlord did not submit the Notice.

Analysis

In order to obtain an order of possession, the landlord has the burden of proving that he served a notice to end tenancy which complies with the requirements of section 52 of the Act. The landlord did not submit that proof despite having been given opportunity to do so and in the absence of a copy of the Notice, I am unable to grant the landlord an order of possession. The claim for the order of possession is dismissed without leave to reapply. The landlord is free to serve on the tenant another notice to end tenancy should he have cause to do so.

I accept the landlord's undisputed evidence that the tenant was obligated to pay \$850.00 per month in rent and that she failed to pay rent in the months of October and November. I find that the landlord is entitled to recover the unpaid rent and I award him \$1,700.00. As the tenant had not paid rent for December as of the date of the hearing, I find that the landlord is entitled to recover that rent as well and I award him an additional \$850.00. As the landlord has been substantially successful in his claim, I find that he should recover the filing fee paid to bring his application and I award him \$50.00 for a total award of \$2,650.00. As I have not found that the tenancy ended, I will not order that the landlord retain the security deposit. However, the landlord is free to apply the security deposit to the order and enforce the balance of the order against the tenant.

Conclusion

The tenant's application is dismissed. The landlord's application for an order of possession is dismissed. The landlord is granted a monetary order for \$2,650.00.

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 12, 2014

Residential Tenancy Branch

