



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF; CNR, RP

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated November 2, 2015 ("10 Day Notice"), pursuant to section 46; and
- an order to the landlord to make repairs to the rental unit, pursuant to section 33;

The tenant did not attend this hearing, which lasted approximately 12 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on November 13, 2015, by way of registered mail to the rental unit where she was still residing. The landlord provided a copy of a Canada Post receipt and tracking number to confirm service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on November 18, 2015, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's 10 Day Notice on November 2, 2015, by way of posting to her rental unit door. The landlord provided a signed, witnessed proof of service form with his Application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on November 5, 2015, three days after its posting.

Preliminary Issue – Amendment of Landlord's Application

The landlord requested an amendment to increase the monetary claim sought for unpaid rent. The landlord stated that because his Application was filed in November 2015, the December 2015 rent was not yet due. The landlord initially made an Application for unpaid rent and indicated the amount owing at that time. Pursuant to section 64(3)(c) of the Act, I amend the landlord's Application to increase the landlord's monetary claim to include December 2015 rent of \$650.00. The tenant is aware that rent is due on the first day of each month as per her tenancy agreement. The tenant continued to reside in the rental unit until December 15, 2015, despite the fact that the 10 Day Notice required her to vacate the rental unit by November 15, 2015, the effective date, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that she did not attend this hearing.

Preliminary Issue – Dismissal of Tenant's Application

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding: The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenant's participation in this hearing, I order the tenant's entire application dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on October 1, 2015 and ended on December 15, 2015. Monthly rent in the amount of \$650.00 was payable on the first

day of each month. The landlord testified that no security deposit was paid for this tenancy. The landlord testified that the tenant vacated the rental unit and he changed the locks after December 15, 2015, but he still wanted an order of possession to confirm that the tenant would not break in to the unit. The landlord provided a copy of the written tenancy agreement with his Application.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$650.00 was unpaid but no due date was provided on the notice. The notice indicates an effective move-out date of November 15, 2015. The landlord stated that the tenant failed to pay rent of \$650.00 for each of November and December 2015, totalling \$1,300.00. The landlord seeks a monetary order for this unpaid rent plus the \$50.00 filing fee paid for his Application.

Analysis

Although I have dismissed the tenant's application to cancel the 10 Day Notice, I find that the landlord is not entitled to an order of possession. I find that the landlord already obtained possession of the rental unit when he changed the locks to the unit after the tenant vacated on December 15, 2015. Therefore, the landlord's Application for an order of possession is dismissed without leave to reapply.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay rent of \$650.00 for November 2015. Therefore, I find that the landlord is entitled to \$650.00 in rental arrears for the above period.

The tenant was required to vacate the rental unit by November 15, 2015, the effective date on the 10 Day Notice. As per the landlord's evidence, the tenant vacated the unit on December 15, 2015, causing loss to the landlord under section 7(1) of the *Act*. Rent of \$650.00 was due on December 1, 2015. Therefore, I find that the landlord is entitled to \$650.00 in rental arrears for the entire month of December 2015.

As the landlord was partially successful in this Application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for the Application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,350.00 against the tenant as follows:

Item	Amount
Unpaid November 2015 Rent	\$650.00
Unpaid December 2015 Rent	650.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$1,350.00

The landlord is provided with a monetary order in the amount of \$1,350.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's Application for an order of possession is dismissed without leave to reapply.

The tenant's entire application is dismissed without leave to reapply.

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: January 12, 2016

Residential Tenancy Branch

