



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD, FF

Introduction

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

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath 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 unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on May 30, 2015 on a fixed term to June 1, 2016. The tenancy agreement does not require the Tenant to move out of the unit at the end of the term. Rent of \$850.00 is payable on the first day of each month. No security deposit was collected by the Landlord. The Tenant owed arrears of \$850.00 and failed to pay rent for June 2016 and the Landlord served the Tenant with a 10 day notice to end the tenancy for unpaid rent (the “Notice”). The Tenant did not dispute the Notice. The Tenant has not paid rent for July and August 2016 and has not moved out of the unit.

The Tenant states that the rents were not paid for several reasons including the Landlord's failure to maintain the unit and make repairs, the furnace did not work, mold was present and garbage from the previous tenancy was still present. The Tenant states that they need more time to move out of the unit

The Landlord seeks an order of possession for August 31, 2016.

Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. Although the Tenant gave evidence of the Landlord's non-compliance with the Act, given the Tenant's evidence of unpaid rent I find that the Tenant failed to pay rent when it was required to be paid. The Tenant is at liberty to make an application in relation to any damages that may have been incurred due to any breach by the Landlord.

Section 46 of the Act provides that upon receipt of a 10 notice to end tenancy for unpaid 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 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. As the Tenant did not dispute the rents owing or the Notice I find that the Landlord is entitled to an order of possession. The Landlord has also substantiated an entitlement to unpaid rent of **\$3,400.00**. As the Landlord's application has had merit I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,500.00**.

Conclusion

I grant an Order of Possession effective 1:00 p.m. on August 31, 2016 to the Landlord. I grant the Landlord an order under Section 67 of the Act for **\$3,500.00**. 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: August 09, 2016

Residential Tenancy Branch

