



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MND, MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent, unpaid utilities, cost of repairs and the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord. Both parties gave affirmed testimony.

During the hearing, the tenant stated that even though he has not lived in the rental unit since early November, his possessions still remain in the unit. Since the tenancy has not ended, I dismiss the landlord's application for damages with leave to reapply. The landlord may also reapply for the remaining utilities that are due to the date that the tenant hands over possession of the rental unit.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order to recover unpaid rent, unpaid utilities and the filing fee?

Background and Evidence

The tenancy started on December 10, 2014. There is no written tenancy agreement. The monthly rent is \$850.00 due in advance on the tenth of each month. The tenant was required to pay a third of the utility bills. The rental unit is located in the lower level of the landlord's home. The landlord lives upstairs

The tenant agreed that he paid partial rent for October in the amount of \$650.00 on October 10, 2016 and owed the landlord \$200.00. The landlord stated that he noticed that the tenant was not living in the rental unit and found out where he was residing.

The landlord stated that the female tenant was also out of town and therefore the landlord chose to serve the male tenant at his new residence. On October 23, 2016, the landlord visited the tenant at his new residence and served the tenant with a ten day notice to end tenancy in the presence of a witness. The landlord filed a proof of service form signed by the witness. The tenant stated that he was not served the notice. Both parties agreed that the balance of rent in the amount of \$200.00 was paid on November 02, 2016. The tenant agreed that he still owed \$123.00 for utilities.

The tenant stated that the landlord locked him out by changing the locks. The landlord denied having changed the locks. The tenant stated that he called the police on November 02, 2016 to help him gain access to the rental unit.

During the hearing, this matter was clarified. At the start of tenancy, the landlord had provided the tenant with a single key to the unit. Both tenants were going out of town and requested the landlord to look after their pets. In order to do so, the tenants gave their only key to the landlord. Upon further discussion, it became clear that the landlord did not change the locks but the tenant did not have access to the rental unit until he retrieved the key from the landlord. The tenant agreed to return on December 14, 2016 and remove the balance of his belongings and hand over possession of the rental unit.

The landlord is applying for an order of possession effective two days after service on the tenant and for a monetary order for unpaid rent and unpaid utilities.

Analysis

The tenant was very firm that he had not received the ten day notice that the landlord testified was served on the tenant in person, on October 23, 2016. The tenant agreed that he owed rent and utilities as indicated on the notice to end tenancy. The tenant stated that he paid rent on November 02, 2016 but still owed \$123.00 for utilities.

Based on the sworn testimony of both parties and the proof of service filed into evidence, I prefer the landlord's testimony. I find on a balance of probabilities that it is more likely than not that the landlord served the tenant with a notice to end tenancy for \$200.00 in unpaid rent plus \$123.00 for unpaid utilities.

Based on the above, I have determined that the tenant received the notice to end tenancy for unpaid rent, on October 23, 2016 and did not full pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I further find that the landlord is entitled to \$123.00 for utilities. The tenant also agreed that he had not paid rent for November and December 2016 and has not fully removed all his possessions from the unit. I find that the landlord is entitled to rent for these months in the amount of \$1,700.00. Since the landlord has proven his claim, he is entitled to the recovery of the filing fee of \$100.00.

Overall the landlord has established a claim of \$1,923.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession **effective two days after service** on the tenant and a monetary order for **\$1,923.00**.

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 13, 2016

Residential Tenancy Branch