Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR, MNR, MNDC, O, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord withdrew his application for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

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

Background and Evidence

The parties agreed that this month to month tenancy started September 22, 2016. Rent for this unit is $700.00 per month due on the 1st of each month. The landlord testified that there was a written tenancy agreement in place which was not signed or returned to the landlord by the tenant. The tenant testified that there was no written tenancy agreement in place.

The landlord testified that the tenant failed to pay all the rent due on November 01 and December 01, 2016 leaving an unpaid balance of $1,400.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on December 07, 2016. This was served in person to the tenant. The Notice informed the tenant that she had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 07, 2016. The tenant did not pay the outstanding rent or file an application to dispute the Notice. Since that time the tenant has failed to pay rent for January, 2017 of $700.00. The total amount of unpaid rent is now $2,100.00. The landlord requested to amend his monetary claim to include the unpaid rent for January, 2017.

The landlord seeks an Order of Possession effective as soon as possible and a Monetary Order to recover the unpaid rent and the filing fee of $100.00.

The tenant did not dispute the landlord's claim to recover unpaid rent and agreed that she has not paid rent for November, December and January as she was no longer working and did not have the money for rent. The tenant understands that the landlord is entitled to an Order of Possession and a Monetary Order.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which states:

> *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.*

I am satisfied from the undisputed evidence before me that there is outstanding rent for three months. As the tenant has continued to reside in the rental unit and would have known that rent was due on January 01, 2017 I will allow the landlord to amend his application to recover rent for January, 2017 along with rent for November and December, 2016. Consequently, it is my decision that the landlord is entitled to recover these amounts to a total of **$2,100.00** and will receive a Monetary Order pursuant to s. 67 of the *Act*.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **$100.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	$2,100.00
Filing fee	$100.00
Total amount due to the landlord	**$2,200.00**

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was served in person it was deemed served on December 07, 2016. The effective date of the Notice is therefore amended to December 17, 2016 pursuant to s. 53 of the *Act*. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act,* to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective two days after service pursuant to s. 55 of the *Act.*

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **$2,200.00** pursuant to s. 67 and 72(1) of the *Act.* The Order must be served on the tenant; if the tenant fails to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective **two days after service** upon the tenant. This Order must be served on the tenant; if the tenant fails to comply with the Order, the Order may be filed in the Supreme 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: January 17, 2017

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Residential Tenancy Branch