



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA LEASEHOLD HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on April 28, 2016. The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities; to keep the security deposit; for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord who provided affirmed testimony that the Tenant was served notice of this application; notice of this hearing; and the Landlord's evidence by registered mail on April 29, 2016. Canada Post tracking information was provided in the Landlord's oral submissions.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up.

Based on the undisputed evidence of the Landlord, I find the Tenant was deemed served notice of this hearing on May 4, 2016, five days after it was mailed, pursuant with Section 90 of the Act. As such, the hearing continued to hear the undisputed evidence of the Landlord in absence of the Tenant.

Issue(s) to be Decided

- 1) Has the Landlord proven entitlement to an Order of Possession?
- 2) Has the Landlord proven entitlement to a monetary order?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a fixed term tenancy agreement which began on August 1, 2015 and was scheduled to end on January 31, 2016. The Tenant initialed section 2.b) of the tenancy agreement which states:

*For a fixed length of time of 6 months with an end date of 31JAN 2016
At the end of this fixed length of time the tenancy ends and the tenant must move out of the residential unit.*

[Reproduced as written]

The tenancy agreement states the “current standard rent for the rental unit is \$650.00” and the Tenant was required to pay subsidized rent. The Landlord submitted evidence that the Tenant’s subsidized rent of \$560.00 was payable on or before the first of each month. On July 30, 2015 the Tenant paid \$250.00 as the security deposit.

The Landlord submitted evidence of a 10 Day Notice to end tenancy which was issued January 11, 2016 for the unpaid rent of \$857.00 that was due on January 1, 2016. The 10 Day Notice was served upon the Tenant when it was posted to her door. Subsequent 10 Day Notices were issued to the Tenant on February 5, 2016 and March 8, 2016 and were posted to the Tenant’s door.

The Landlord stated no rent has been received from the Tenant since December 1, 2015. The Landlord submitted that they conducted a general inspection of the rental unit on February 26, 2016. The Landlord asserted that during that inspection they saw beds, furniture, and food inside the rental unit so they were of the opinion the rental unit was still being occupied.

I asked the Landlord why they did not seek a remedy prior to April 28, 2016 considering rent had not been paid since December 2015 and the tenancy end date was January 31, 2016. The Landlord testified she only began her position with this Landlord in January 2016. She indicated the position had been vacant for many months prior to her being hired so she was working through numerous tenancy files.

The Landlord now seeks to obtain an Order of Possession and a Monetary Order for unpaid from December 2015 to June 30, 2016.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the first 10 Day Notice on January 14, 2016, three days after it was posted to the Tenant’s door. The effective date of that 10 Day Notice would have been January 24, 2016. The Tenant neither paid the rent nor

disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **January 24, 2016.**

Accordingly, I grant the Landlord's request for possession and issue them an Order of Possession effective 2 Days upon service to the Tenant. In the event that the Tenant does not comply with this Order it may be enforced through Supreme Court.

Section 7(2) of the *Act* stipulates that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 26 of the Act stipulates, in part, that a tenant must pay rent in accordance with the tenancy agreement.

In this case the tenancy agreement stipulated the tenancy was for a fixed period of time ending on January 31, 2016; at which time the Tenant was required to vacate the rental unit. The undisputed evidence was the Tenant failed to pay her rent in accordance with section 26 of the *Act*. The 10 Day Notice issued January 11, 2016 indicated the Tenant owed \$857.00 for rent that was due January 1, 2016. As per the aforementioned, I find the Landlord has met the burden of proof and I award them unpaid rent for December 2015 and January 2016, in the amount of **\$857.00.**

Section 44(1)(b) of the *Act* stipulates that if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy, the tenancy ends on that date specified as the end of tenancy date.

After careful consideration of the evidence before me I find the Landlord provided insufficient evidence to prove the Tenant was still occupying the rental unit after January 24, 2016, the effective date of the 10 Day Notice or after January 31, 2016, the end date of the tenancy pursuant to section 44(1)(b) of the *Act*. The presence of furniture or food inside a rental unit is not sufficient evidence that a person is still residing inside a rental unit, as those possessions may have been abandoned by the Tenant.

In addition, I find the Landlord did not take action soon enough to mitigate their losses as required by section 7 of the *Act*. The Landlord served the Tenant a 10 Day Notice in January 2016 and waited an additional 3 months before seeking an Order of Possession or Monetary Order. Accordingly, I dismiss the claim for unpaid rent or use and occupancy claimed for any period after January 31, 2016, without leave to reapply. That being said, the Landlord has liberty to seek compensation for any losses other than rent or use and occupancy they may have suffered as a result of this tenancy.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review]*

of director's decision] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord have been partially successful with their application; therefore I award recovery of the **\$100.00** filing fee

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$250.00 deposit since January 31, 2016.

Monetary Order – This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Dec. 2015 and Jan. 2016 Rent	\$ 857.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$ 957.00
LESS: Security Deposit \$250.00 + Interest 0.00	<u>- 250.00</u>
Offset amount due to the Landlord	<u>\$ 707.00</u>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$707.00 forthwith.

In the event the Tenant does not comply with the above order, the Landlord has been issued a Monetary Order in the amount of **\$707.00** which may be enforced through Small Claims Court after service to the Tenant.

Conclusion

The Landlord was partially successful with their application and was awarded an Order of Possession effective 2 days upon service and a Monetary Order in the amount of **\$707.00**.

This decision is final, legally binding, and 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: June 01, 2016

Residential Tenancy Branch