



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL MNDCL FFL

Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

At the end of the hearing, I concluded that the landlord's application has confused the tenant's surname as the tenant's first name, and I have amended the application accordingly. The frontal page of this Decision is the amended Style of Cause.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2017 and the tenant still resides in the rental unit. Rent in the amount of \$1,500.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a

security deposit from the tenant in the amount of \$750.00, which was applied to unpaid rent for October, 2017 by consent. No pet damage deposit was collected. The rental unit is a single family dwelling, and there is no written tenancy agreement.

The landlord further testified that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 10, 2017 by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated December 10, 2017 and contains an effective date of vacancy of December 19, 2017 for unpaid rent in the amount of \$2,650.00 that was due October to December, 2017.

Rent is always paid in cash and the landlord has never issued any receipts. The tenant paid the landlord \$750.00 on October 5 or 6, 2017 and asked the landlord to apply the \$750.00 security deposit to the unpaid portion and the landlord agreed. In November, 2017 the tenant paid \$350.00 but no rent has been received since. The tenant is in arrears of rent the sum of \$1,150.00 for November and \$1,500.00 for each of December and January, for a total of \$4,150.00.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the notice or with any other written correspondence, and the landlord seeks an Order of Possession and a monetary order for the unpaid rent and recovery of the \$100.00 filing fee.

The tenant testified that he paid the landlord in full for October and November, 2017.

The tenant received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities but has not filed an Application for Dispute Resolution because the tenant was attempting to settle this dispute with the landlord outside of the dispute resolution process.

Analysis

The *Residential Tenancy Act* states that once served, or deemed served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a tenant has 5 days to pay the rent in full (in which case the notice has no effect), or dispute the notice by filing and serving the landlord with an Application for Dispute Resolution within that 5 day period. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit within 10 days of service.

In this case, the parties agree that no rent was paid for December, 2017 or for January, 2018, and the parties agree that the tenant did not dispute the notice. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the

landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

With respect to unpaid rent, the tenant agrees that he owes for December and January, and since the tenant disputes the claim for November, and the landlord has never issued receipts, I find that the landlord has failed to establish that November's rent wasn't paid. I find that the landlord has established a claim for unpaid rent in the amount of \$3,000.00.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord did not lead any evidence with respect to the monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and I dismiss that portion of the claim.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,100.00.

The landlord's application for further monetary compensation is dismissed.

This order is final and binding and may be enforced.

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 30, 2018

Residential Tenancy Branch