



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the landlord for an Order of Possession for unpaid rent, for a Monetary Order to recover unpaid rent and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 82 of the *Act*, and was sent by registered mail to tenant on August 19, 2011. The tenant is deemed to have received the hearing documents on the fifth day after they were mailed in accordance with section 90(a) of the *Act*.

The landlords' agent and the tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

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

Background and Evidence

Both parties agree that this tenancy started sometime in June, 2006 and is a month to month tenancy agreement for the tenant to rent this site for the sum of \$358.40 per month. Rent is due on the 25th day of each month.

The landlords' agent testifies that the tenant had rent arrears of \$1,203.43 in March, 2011. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent but this Notice was later

withdrawn as the tenant agreed to pay the outstanding arrears each month allowing her to catch up on her rent by the end of May, 2011. The landlords' agent testifies the tenant failed to keep to this arrangement and another 10 Day Notice to End Tenancy was issued on May 02, 2011 showing rent and utilities outstanding of \$1,203.43. The landlords' agent testifies she did not enforce this Notice and the tenant continued to pay small amounts of rent. Finally the landlord issued the tenant with another 10 Day Notice to End Tenancy on August 12, 2011. This Notice was served in person to the tenant and states the tenant owes rent and utilities of \$690.22. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on August 23, 2011. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has paid a small amount from her rent arrears. The landlord testifies she marked the receipt stating that by accepting this it did reinstate the tenancy. The amount of outstanding rent and utilities at this time is now \$683.12.

The landlord seeks an Order of Possession to take effect as soon as possible and seeks to recover the filing fee.

The tenant does not dispute that she owes rent and utilities to the landlord of \$683.12. The tenant states she also understands the landlord is entitled to an Order of Possession and she must remove her RV from the site within two days of receiving the Order of Possession.

Analysis

Section 20(1) of the *Act* states: *a tenant must pay rent when it is due under the tenancy agreement*. Both parties agree that rent is due on the 25th day of each month and the tenant agrees that she has rent and utility arrears of \$683.12. Consequently, I find that the landlord is entitled to recover rent arrears of **\$683.12** pursuant to s. 60 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 81 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay 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 39(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to section 48 of the *Act*.

As the landlord has been successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 65(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$733.12** comprised of outstanding rent, utilities and the filing fee. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and 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: September 22, 2011.

Residential Tenancy Branch