



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent, compensation for damage or loss, recovery of the filing fee, and an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to a monetary order for unpaid rent, compensation for damage and loss, recovery of the filing fee and an order to keep all or part of the security deposit and pet damage deposit?

Background and Evidence

The Landlord and Tenant agree that they have a month to month tenancy agreement which commenced on November 01, 2010. The parties agree that the rent is \$900.00 per month, due on the first of the month, and that the Landlord has a security deposit of \$450.00 plus a pet damage deposit of \$450.00. The parties agree that the tenancy agreement contains a clause which states that the Tenant will pay \$20.00 for late payments of rent and \$30.00 for NSF cheques, and this clause was initialled by the Tenant. The Tenant is still in the rental unit at the time of this hearing.

The Tenant testified that the Landlord personally served him with a 10 Day Notice to End Tenancy on November 02, 2011. The Tenant confirmed that he did not file an Application to dispute the Notice within 5 days and that he has not moved out of the rental unit. The Tenant agreed at the hearing that he does owe the Landlord a total of \$1,800.00 for November and December rent. The Tenant testified that he is waiting for surgery and he has had many bills to pay which he has given priority over his rent payments.

The Landlord stated that the Tenant owes \$900.00 rent for November, plus a \$20.00 late fee, and \$900.00 rental income for December 2011 as the Tenant is still in the rental unit. The Landlord stated that the Tenant owes a late fee of \$20.00 for November's rent, pursuant to the tenancy agreement. The Landlord stated that they are seeking an order of possession and a monetary order for the outstanding amounts. The Landlord also stated that they would like to have an order to keep the security deposit and pet damage deposit to offset the amounts owed.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's evidence that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on November 02, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was personally served on the Tenant on November 02, 2011, it was deemed to have been served the same day. The Notice states that the Tenant had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end on November 12, 2011. The Tenant did not pay the outstanding rent and did not apply to dispute the Notice to End Tenancy within five days from the date of service. The deadline to do so was November 07, 2011. The Landlord correctly indicated that the Tenant had until November 12, 2011 to vacate the premises, based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days, the Tenant did not file an Application to dispute the Notice, and the Tenant has failed to vacate the premises as required by the Notice.

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 November 12, 2011, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. The Tenant agrees that he owes the Landlord a total of \$1,800.00 for rent for the months of November and December 2011. I find that the Landlord has established a monetary claim of \$1,800.00.

I also find that the tenancy agreement signed by the Tenant has a clause in it regarding late fees which was also initialed by the Tenant. I find that the Landlord is also entitled to the \$20.00 late fee for November 2011 which they have claimed on their Application.

As the Landlord has succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the balance of the amount owing to the Landlord to \$1,870.00.

The Landlord holds the Tenant's security deposit of \$450.00 and a pet damage deposit of \$450.00. I order that the Landlord retain the security deposit and the pet damage deposit which add up to \$900.00, in partial satisfaction of the claim. I grant the Landlord an order under section 67 for the balance due of **\$970.00**.

Conclusion

I find that the Landlord is entitled to an order of possession not later than **two (2) days after service** of this order on the Tenant. This order must be served on the Tenant and may be filed in Supreme Court.

I find that the Landlord is entitled to \$1870.00 comprised of unpaid rent, a late fee, and the filing fee. As I have ordered that the Landlord retain the security deposit and pet damage deposit totaling \$900.00, I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenant in the amount of **\$970.00**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The orders accompany the Landlord's copy of this decision.

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 06, 2011.

Residential Tenancy Branch