



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

The tenant advised me there was an error in name on the application. The parties did not raise any objections to the error being corrected and this has now been amended to show the correct name for the tenant.

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent and an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on November 24, 2011. Mail receipt numbers were provided by the landlord. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, and in written form, documentary form, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issues(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?

- Is the landlord entitled to keep the security deposit?

Background and Evidence

This tenancy started on November 01, 1995 and a new tenancy agreement was put in place on May 01, 1999. Rent for this unit is now \$711.00 per month and is due on the first of each month. The tenant paid a security deposit of \$325.00 on May 01, 1999.

The landlord's agent testifies that the tenant failed to pay rent for November, 2011 of \$709.00 (the tenant had a \$2.00 credit from the previous month). The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on November 04, 2011. This was sent to the tenant in the regular mail and was deemed to have been served five days after posting. This Notice stated that the tenant owes rent of \$709.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on November 19, 2011. The tenant did not pay the outstanding rent and also failed to dispute the Notice within five days. Since that time the tenant has failed to pay rent for December, 2011 and the landlord's agent has requested to amend the application to include Decembers rent arrears in the claim. The total amount of outstanding rent is now \$1,413.00.

The landlord has applied to retain the tenants' security deposit of \$325 plus accrued interest of \$33.91 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible and seeks to recover their \$50.00 filing fee from the tenant.

The tenant does not dispute that he owes rent for November and December, 2011. The tenant states he has been attempting to obtain disability payments and can pay the rent arrears on December 21 and December 29, 2011 if the landlord allows the tenant to remain in the unit.

The landlord's agent states that his instructions from the owner of the property are to proceed with the Order of Possession.

Analysis

Section 26 of the Act 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 find the tenant failed to pay rent for November, 2011 of \$709.00. I also allow the landlord to amend their claim to recover unpaid rent for December 2011 as the tenant would have been aware that rent was due on December 01, 2011. Consequently, the landlord is entitled to a Monetary Order to recover these arrears to the total sum of **\$1,413.00** pursuant to s.67 of the Act.

I order the landlords pursuant to s. 38(4)(b) of the Act to keep the tenant's security deposit and accrued interest of **\$358.91** in partial payment of the rent arrears.

As the landlord has been successful in this matter, they are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the Act.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent	\$1,413.00
Less security deposit and accrued interest	(-\$358.91)
Plus filing fee	\$50.00
Total amount due to the landlord	\$1,103.09

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. 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 46(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.

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 **\$1,103.09**. 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 landlords 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: December 14, 2011.

Residential Tenancy Branch