



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application under the Residential Tenancy Act, (the “Act”), by the Landlord for an order of possession, a monetary order for unpaid rent, compensation for damage or loss, to recover the filing fee, and an order to keep all of the security deposit and pet damage deposit.

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.

Preliminary Matter(s)

The Landlord indicated several matters of dispute on their application and confirmed that the main issue to deal with during this proceeding is the Notice to End Tenancy. The Landlord’s monetary claims are in dispute between the parties, and the Landlord has provided insufficient evidence with regards to their monetary claims. As a result, I determined that it was appropriate to sever the Landlord’s claims for unpaid rent, compensation for damages and losses, and the request to keep all of the security deposit and pet damage deposit.

Therefore, I will deal only with the Landlord’s request for an order of possession and filing fee, and I dismiss the balance of the Landlord’s claim with liberty to re-apply.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession, and the filing fee?

Background and Evidence

The Landlord and Tenant have a tenancy agreement which they entered into in December 2011 and the Tenant moved into the rental unit on January 24, 2012. The tenancy agreement has not been formally put in writing and signed by the parties at this time. The parties agree that the Tenant rents a rental unit with its own kitchen and bathroom that are not shared with the Landlord.

The parties agree that the Tenant responded to an online rental ad which indicated that the Landlord was seeking a Tenant for January 2012 for a rent of \$800.00 per month.

Tenant paid the Landlord \$1,300.00 on December 30, 2011 through electronic funds transfer, as the Tenant was still living in Toronto at the time. The parties agree that the \$1,300.00 represents \$800.00 in rent, \$400.00 in security deposit, and \$100.00 in pet damage deposit. The parties agree that the Tenant informed the Landlord in advance that he would not be moving into the rental unit until January 24, 2012. The parties disagree on how much of the \$800.00 in rent paid on December 30, 2011 is for January 2012 and how much of the \$800.00 in rent is for February 2012.

The parties agree that on February 05, 2012 that the Landlord served the Tenant in person with a 10 Day Notice to End Tenancy. As a copy of the 10 Day Notice to End Tenancy was not provided for our office file prior to the hearing, however, the Tenant agreed to read the Notice he received into evidence.

The Tenant testified that he received the 10 Day Notice to End Tenancy, two pages, which states that he owes \$800.00 in rent effective February 01, 2012 which must be paid within five days or he must move out on February 15, 2012. The Tenant stated that he disagrees that he owes this amount of rent. The Tenant stated that he has not paid the Landlord any rent since the \$800.00 rent paid on December 30, 2011. The Tenant stated that he went to our office on Friday February 10, 2012 with a copy of the Notice and picked up a copy of an application for dispute resolution form. The Tenant stated that he did not fill out an application form at that time and states he was told by someone at our office that he did not have to do so yet. The Tenant stated that he also did not fill out an application form for dispute resolution after receiving a copy of the Landlord's application for dispute resolution and notice of hearing package.

The Landlord stated that the Tenant did not pay rent which was due on February 01, 2012 as a result they issued a 10 Day Notice for Unpaid Rent to the tenant on February 05, 2012. The Landlord stated that the Tenant has not paid rent since December 30, 2011 and is in arrears for rent for February and also for March 2012. The Landlord stated that the Tenant has not moved out of the rental unit as required by the 10 Day Notice. The Landlord applied for dispute resolution on February 17, 2012.

The Landlord is seeking an order of possession plus the filing fee for this Application.

Analysis

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

The testimony of the parties confirmed that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on February 05, 2012 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was personally delivered to the Tenant, it was deemed to have been served on February 05, 2012 (the same day). The Notice states that the Tenant had five days to pay the full amount of the outstanding rent or the tenancy would end from

the service date. The Tenant did not pay the outstanding rent or file an application to dispute the Notice within five days from the date of service. The deadline to do so was February 10, 2012. The Landlord correctly indicated that the Tenant had until February 15, 2012 to vacate the premises, as this is ten days from the deemed service date, pursuant to the provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days of service of the Notice, and the Tenant did not move out as required by the Notice. While the Tenant alleges that he was told by our office that he did not need to file an application for dispute resolution of the Notice on or before February 10, 2012, he has not provided sufficient evidence to prove his allegation. As a result, I also find the Tenant failed to file an application for dispute resolution within five days of service of 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 February 15, 2012, which is ten days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession for the rental unit effective 2 days from the date of service of the order on the Tenant.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding, and I order that the Landlord may deduct this amount from the security deposit which they hold. The balance of the security deposit and pet damage deposit must be dealt with in accordance with the Act.

Conclusion

The Landlord's other disputes: unpaid rent, compensation for damages and losses, and the request to keep the balance of the security deposit and pet damage deposit, as set out on their Application are dismissed with liberty to reapply.

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 order that the Landlord may deduct \$50.00 from the security deposit. The balance of the security deposit and pet damage deposit must be dealt with in accordance with the Act.

The order accompanies 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: March 07, 2012.

Residential Tenancy Branch