



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a monetary order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for other reasons to end the tenancy and regain possession of the unit, and to recover the cost of the filing fee from the Tenant for this application .

The Landlord appeared at the teleconference hearing and gave affirmed testimony that he served the Tenant with the Notice of Dispute Resolution hearing documents by registered mail on August 3, 2012 and again in person on August 17, 2012. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding so I continued this proceeding in the absence of the Tenant.

Issue(s) to be Decided

1. Should the Landlord be granted a Monetary Order?
2. Should the Landlord be granted an Order of Possession?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: Canada Post receipts; the Tenant's July 3, 2012 written notice to end his tenancy effective July 31, 2012; the Landlord's August 10, 2012 letter to the Tenant advising of the Landlord's intent to seek an Order of Possession.

The Landlord stated that this tenancy began on April 23, 2012. Rent is payable on the first of each month in the amount of \$433.00 and on April 23, 2012 the Tenant paid \$282.00 as the security deposit.

The Landlord submitted that he allowed the Tenant to provide late notice to end the tenancy effective July 31, 2012 and he proceeded to find a new tenant. The Landlord

agreed to conduct the move out inspection on July 31, 2012 at 2:00 p.m. as per the Tenants request; however when they attended the unit on this date the Tenant failed to show up for the inspection. After several hours of waiting they sought assistance from the police to enter the unit to ensure the Tenant was not injured. Upon entering the unit the Landlord noticed that it did not appear the Tenant was making an effort to move out of the unit.

The Tenant failed to pay the August 1, 2012 rent and continued to occupy the unit. The Landlord delivered a letter to the Tenant on August 14, 2012 informing him of their intent to seek an order of possession. Then on August 17, 2012 the Tenant deposited August rent directly into the Landlord's bank without contacting the Landlord. The Tenant also paid September rent in the same fashion by depositing the funds on August 31, 2012. The Landlord submitted that the funds were accepted for use and occupancy only and argued that their intentions were made very clear to the Tenant in their August 14, 2012 letter.

The Landlord is seeking an Order of Possession for September 30, 2012, as the Tenant has paid for occupancy of the unit to that date. They are also seeking damages in the amount of \$40.00 to cover the cost of their time to attend the move out inspection which the Tenant failed to attend and the \$50.00 filing fee.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their evidence.

The Act provides that a tenancy ends if the tenant gives notice to end the tenancy in accordance with section 45 of the Act. In this case the Tenant provided the Landlord written notice to end his tenancy effective July 31, 2012, the Landlord accepted the notice, re-rented the unit to a new tenant, and scheduled a move out condition inspection based on the Tenant's requested date and time.

The Tenant failed to show up for the move out inspection and failed to vacate the property as of the effective date of his notice. The *Residential Tenancy Policy Guideline # 11* stipulates that a landlord or tenant cannot unilaterally withdraw a notice to end tenancy. Therefore I find this tenancy ended on **July 31, 2012**, pursuant to the Tenant's written notice and in accordance with section 44(1)(a)(i) of the Act.

The Landlord stated their intentions to seek an Order of Possession in their August 10, 2012 letter and has subsequently accepted payments from the Tenant for use and occupancy of the rental unit to September 30, 2012. Accordingly I award the Landlord an Order of Possession effective **September 30, 2012**.

In regards to the Landlord's claim for attending the move out inspection July 31, 2012, I find these costs to be the Landlord's normal course of business which cannot be assumed by the Tenant. The Act does not provide for costs incurred by a landlord conducting their normal course of business; rather the remedy provided by the Act would be to end the tenancy for cause. Therefore, I dismiss the Landlord's claim for \$40.00 for their time spent to deal with the tenant not showing up for a scheduled meeting/inspection.

The Landlord has been primarily successful with their application; therefore I award them recovery of the **\$50.00** filing fee.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **September 30, 2012, at 1:00 p.m. after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$50.00**. This Order is legally binding and must be served upon the Tenant.

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 04, 2012.

Residential Tenancy Branch