



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, FF

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and damage or loss under the Act, regulations or tenancy agreement. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant at the rental unit via registered mail on November 20, 2010. The landlord provided a registered mail receipt and tracking number as proof of service. The landlord also testified that as of November 15, 2010 the tenant was still occupying the rental unit. On November 25, 2010 the landlord found the rental unit vacated.

I was satisfied the tenant was notified of this proceeding in a manner that complies with section 89 of the Act and I proceeded to hear from the landlord without the tenant present.

As the landlord has regained possession of the rental unit an Order of Possession is no longer required and I do not provide one with this decision. The remainder of this decision pertains to the landlord's monetary claim. The landlord also requested the application be amended to include retention of the security deposit in partial satisfaction of the rent owed. As I did not find this request was prejudicial to the tenant I granted the request for amendment.

Issues(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent or damage or loss under the Act, regulations or tenancy agreement?
2. Is the landlord authorized to retain the security deposit and interest?

Background and Evidence

The landlord provided undisputed evidence as follows. The tenancy commenced November 1, 2008 and the tenant paid a \$425.00 security deposit on October 18, 2008. The tenant was required to pay rent of \$850.00 on the 1st day of every month. The tenancy agreement provides for a late fee of \$20.00. The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door on November 2, 2010. The Notice indicates \$880.00 was outstanding as of November 1, 2010 and had an effective vacancy date of November 13, 2010.

The landlord testified that the \$880.00 indicated on the Notice includes the late fee for November 2010 and parking of \$10.00 for the month of November 2010. The landlord testified that the unit was re-rented as of December 4, 2010 and reduced the claim for loss of rent to \$124.92. I also heard that the tenant did not give notice to end the tenancy.

Provided as documentary evidence for this proceeding was a copy of the tenancy agreement, parking agreement, tenant's ledger, 10 Day Notice and registered mail receipt.

Analysis

Where a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or dispute the Notice. Since the Notice was posted on the door it was deemed to be received three days later on November 5, 2010. Accordingly, the effective date on the Notice changes to read November 15, 2010 under section 53 of the Act.

In this case the tenant failed to pay the outstanding rent after being served a 10 Day Notice and I find the tenancy ended November 15, 2010. I find the landlord entitled to

the outstanding rent, late fee and parking charge for the month of November 2010 in the amount of \$880.00.

Upon review of the parking agreement I find that it is an addendum to the tenancy agreement and enforceable under the Act. I have included the parking charge of \$10.00 in calculating the loss of rent for the month of December 2010. With respect to loss of rent for December 2010 I am unable to verify the calculation provided by the landlord. Rather, I calculate the loss of rent to be no more than \$110.97 $[(\$850.00 + 10.00) \times 4/31 \text{ days}]$. Therefore, I award the landlord \$110.97 for loss of rent.

I award the filing fee to the landlord and authorize the landlord to retain the security deposit and interest of \$427.70 in partial satisfaction of the amounts owed to the landlord.

In light of the above, I provide the landlord a Monetary Order calculated as follows:

| | |
|--------------------------------------|-----------------|
| November rent, parking & late fee | \$ 880.00 |
| December loss of rent | 110.97 |
| Filing fee paid for this application | 50.00 |
| Less: security deposit and interest | <u>(427.70)</u> |
| Monetary Order provided to landlord | \$ 613.27 |

The landlord must serve the Monetary Order upon the tenant and may enforce the Order in Small Claims court.

Conclusion

The tenant has vacated and an Order of Possession is not provided with this decision. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$613.27 to serve 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: December 09, 2010.

Dispute Resolution Officer