



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This participatory hearing was scheduled for 10:30 a.m. on today's date pursuant to a decision issued by a Dispute Resolution Officer under the Direct Request Procedure. She set the matter for a participatory hearing as the identity of the tenant(s) was identified as a concern.

At the commencement of the hearing the landlord acknowledged that only one of the two named respondents had signed the tenancy agreement and the other named respondent was the tenant's roommate. Accordingly, I amended the application to exclude the person who did not sign the tenancy agreement. I proceeded to consider the landlord's application for an Order of Possession and Monetary Order for unpaid rent against the tenant who signed the tenancy agreement.

As the tenant was not in attendance at the hearing the landlord was asked to prove service of the hearing documents upon the tenant. The landlord testified that the tenant was personally served with notification of this hearing on October 27, 2011 at the rental unit. Based on the landlord's submission I accepted that the tenant has been sufficiently served and I proceeded to hear from the landlord without the tenant present.

The landlord testified that the tenant may have since abandoned the rental unit but requested an Order of Possession in the event he or his roommate has not.

The landlord requested that his application be amended to include a request to retain the security deposit in partial satisfaction of the rent owed. As I found such a request not prejudicial to the tenant I granted the landlord's request for amendment.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced December 1, 2010 and the tenant was required to pay rent of \$700.00 on the 1st day of every month. The tenant paid a \$350.00 security deposit. The tenant failed to pay \$150.00 of the rent owed for September 2011 and \$350.00 of the rent owed for October 2011. On October 2, 2011 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the rental unit door. The Notice has a stated vacancy date of October 12, 2011 and indicates rent of \$500.00 was outstanding as of October 1, 2011. The tenant did not pay the outstanding rent and did not dispute the Notice.

Provided as documentary evidence for this proceeding were copies of: the tenancy agreement, the Notice, and a signed Proof of Service for the Notice.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice. Since the Notice was posted it is deemed to be received three days later and the effective date is automatically changed to read October 15, 2011 pursuant to section 53 of the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on October 15, 2011 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service.

I find the landlord entitled to recover unpaid rent in the amount of \$500.00 as claimed. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order to serve upon the tenant that is calculated as follows:

Outstanding rent – as per Notice	\$ 500.00
Filing fee	50.00
Less: security deposit	<u>(350.00)</u>
Monetary Order	\$ 200.00

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service. The landlord is authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance owing of \$200.00 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: November 17, 2011.

Residential Tenancy Branch