



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, late fees and loss of rent. The landlord also requested authorization to retain the security deposit and pet deposit in partial satisfaction of the landlord's claims. The tenants did not appear at the hearing. The landlord's agent testified that the male tenant was personally served with hearing packages for both tenants on October 18, 2011.

Section 89 of the Act determines the method of service an Application for Dispute Resolution. The landlord has applied for a Monetary Order which requires that the landlord serve each respondent as set out under section 89(1). In this case, only one of the two tenants has been personally served with the landlord's application. Therefore, I find that the request for a Monetary Order against both tenants must be amended to name the male tenant only since he was served with notification of the landlord's monetary claims.

The landlord has requested an Order of Possession against both tenants. Section 89(2) of the Act determines that the landlord may leave a copy of the Application for Dispute Resolution related to a request for an Order of Possession at the tenant's residence with an adult who apparently resides with the tenant. I find that by serving the male tenant with the landlord's application, both tenants have been sufficiently served with the portion of the Application for Dispute Resolution relating to an Order of Possession.

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, late fees and loss of rent?
3. Is the landlord authorized to retain all or part of the security deposit or pet deposit?

Background and Evidence

The tenancy commenced May 15, 2008 and the tenants paid a security deposit and pet deposit totalling \$925.00. The tenancy agreement provides that the tenants are to pay rent of \$925.00 on the 1st day of every month. The monthly rent was increased to \$945.00 effective October 1, 2011 by way of a Notice of Rent Increase served upon the tenants on June 22, 2011.

The tenants paid \$500.00 of the rent owed for October 1, 2011 and on October 2, 2011 the landlord personally served the male tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates rent of \$445.00 was outstanding and has an effective vacancy date of October 13, 2011.

I heard testimony that the tenants paid the landlord \$400.00 on October 14, 2011. The tenants then paid \$70.00 to the landlord October 21, 2011 and \$500.00 on November 1, 2011 for which receipts were issued for "use and occupancy only".

In making this application the landlord was seeking to recover unpaid rent for October, a late fee for October 2011 and loss of rent for November 2011 in the total amount of \$1,440.00. In recognition of the partial payments made by the tenants after the application was filed, the landlord reduced the monetary claim to \$445.00 as the remainder owed for November 2011.

Documents provided as evidence for this proceeding included: the tenancy agreement, the 10 Day Notice; Proof of Service of the 10 Day Notice; and, the Notice of Rent Increase.

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.

I accept the evidence before me that the tenant received the 10 Day Notice on October 2, 2011 and did not pay the outstanding rent or dispute the Notice within five days. Accordingly, I find the tenancy ended on October 13, 2011 and the landlord is entitled to regain possession of the rental unit.

Since the landlord has accepted \$500.00 for use and occupancy only on November 1, 2011 I find the tenants have paid for use and occupancy until 1:00 on November 16, 2011. Accordingly, I provide the landlord with an Order of Possession effective November 16, 2011. To be enforceable, the Order of Possession must be served upon the tenants.

Since the tenants have paid for use and occupancy until November 16, 2011 I find the landlord's loss of rent for the remainder of the month is anticipatory. Upon serving the tenant with the Order of Possession, the landlord has the right to make efforts to re-rent the unit starting November 16, 2011. If the landlord is unable to re-rent the unit despite reasonable efforts, the landlord is at liberty to make another application.

The landlord is awarded the filing fee paid for this application and is authorized to deduct \$50.00 from the tenant's security deposit.

Conclusion

The landlord has been provided an Order of Possession effective at 1:00 on November 16, 2011. The landlord is authorized to deduct \$50.00 from the tenant's security deposit to recover the filing fee paid for this application. The landlord's claim for loss of rent for the remainder of November 2011 is dismissed with leave to reapply.

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 08, 2011.

Residential Tenancy Branch