



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession; a Monetary Order for unpaid rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that he personally served the hearing documents upon the tenant at the rental unit on December 13, 2011 in the presence of a witness. Having been satisfied the tenant has been sufficiently served with notification of this hearing I proceeded to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
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 tenant is required to pay rent of \$850.00 on the 1st day of every month under a month-to-month tenancy for unit #6. The tenant paid a \$387.50 security deposit for a previous unit he rented which was applied to this tenancy.

The tenant failed to pay rent for December 2011 and on December 5, 2011 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the rental unit door in the presence of a witness. The Notice indicates \$850.00 was outstanding as of December 1, 2011 and has a stated vacancy date of December 15, 2011. The tenant did not pay the outstanding rent and did not vacate the rental unit.

The landlord is seeking to recover the \$850.00 in unpaid rent for December 2011.

As evidence for this proceeding the landlord provided a copy of the tenancy agreement; the 10 Day Notice; and Proof of Service of the 10 Day Notice signed by the witness.

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 December 18, 2011 under section 53 of the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on December 18, 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 upon the tenant.

I find the landlord entitled to recover unpaid rent for the month of December 2011 in the amount of \$850.00. 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 calculated as follows:

December 2011 rent	\$ 850.00
Filing fee	50.00
Less: security deposit	<u>(387.50)</u>
Monetary Order	\$ 512.50

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is authorized to retain the security deposit and is provided a Monetary Order for the balance of \$512.50 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 22, 2011.

Residential Tenancy Branch