



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 12, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

- Is the landlord entitled to keep all or part of the tenant's security deposit?

Background and Evidence

The landlord testifies that this tenancy started with two tenants on June 01, 2011. A written tenancy agreement is in place and was provided in evidence by the landlord. The landlord testifies that by mutual agreement the female tenant was removed from the tenancy agreement in mid November as she moved from the rental unit and the tenancy continued with the male tenant. This is a fixed term tenancy which is due to expire on May 31, 2012. Rent for this unit is \$1,150.00 per month and is due on the last day of each month in advance. The tenant paid a security deposit of \$575.00 on May 31, 2011 and a pet deposit of \$575.00 on June 15, 2011.

The landlord testifies that the tenant has failed to pay rent for December, 2011 which was due on November 30, 2011. The landlord served the tenant with a 10 Day Notice to End Tenancy on December 01, 2011. This Notice has an effective date of December 10, 2011 and was posted to the tenant's door. The landlord filed his application for this proceeding on December 07, 2011. While the landlord did file his application prematurely the tenant was not deemed to be served the application until December 17, 2011 and the tenant has not applied to cancel the Notice nor has the tenant paid the outstanding rent; therefore the hearing will continue at this time.

The landlord testifies that he received a telephone call from a neighbour of the rental unit to inform him that there were five people who she did not recognise entering the rental unit. The landlord testifies that he went to the unit and phoned the RCMP to report a suspected burglary. The landlord testifies that he met the RCMP officers at the unit and they were talking to two young ladies. The officer asked the landlord if he knew these people as they had told the officer they had come to the house to collect a dog and that they had a key. The landlord states he told the officer that as far as he knew the only person with a key was the tenant. The landlord states the police tried the key in

the door and it opened the door. They also tried the landlord's key in the door and found the landlord's key did not work. The landlord states the tenant must have changed the locks without authorisation. The landlord testifies that the RCMP officer gave the landlord the working key and advised the landlord to change all the locks.

The landlord testifies while he was at the unit later that day with the locksmith three young men come to the unit and one of them told the landlord he wanted to get his stuff from the house as he had been renting the basement from the tenant. The landlord testifies as he was unaware of this arrangement and did not know this person so he refused him access to the house.

The landlord has concerns about the rental unit and is concerned that the tenant may have sublet a portion of the property without consent of the landlord. The landlord states he has been unable to contact the tenant.

The landlord seeks an Order of Possession to take effect as soon as possible. The landlord also seeks an Order to keep the security and pet deposit to satisfy the unpaid rent and seeks to recover his \$50.00 filing fee paid for this proceeding.

Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I refer the tenant to s. 26 of the Act which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Consequently, I find that the landlord is entitled to recover rent arrears for December, 2011 to the sum of **\$1,150.00** pursuant to s.67 of the Act.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security and pet deposit of **\$1,150.00** in satisfaction of the rent arrears. As this is a fixed term tenancy the landlord is at liberty to file an application for a loss of rental income which cannot be dealt with at the hearing today.

The landlord has applied for the sum of \$2,300.00, however the landlord explained that he had added the security and pet deposits to this amount and the amount he is actually claiming in unpaid rent for December is only \$1,150.00. The landlords claim has therefore been revised to this amount.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$50.00** for the filing fee. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I ORDER the landlord to keep the security and pet deposit of \$1,150.00 in full satisfaction of unpaid rent for December, 2011.

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 30, 2011.

Residential Tenancy Branch