



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, gave affirmed testimony and provided an evidence package to the Residential Tenancy Branch in advance of the hearing, but did not provide a copy of the evidence to the tenant. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on November 19, 2011, the tenant did not attend. The landlord testified that the tenant was served with the documents by registered mail and provided a tracking number from Canada Post as evidence that the tenant has been served. I accept the testimony of the landlord, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*. I do not, however, find that the tenant is in receipt of the evidence provided by the landlord. All testimony provided by the landlord has been reviewed and is considered in this Decision, however, none of the evidence provided in advance of this hearing has been considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 1, 2007 and expired on September 30, 2008. The parties entered into further fixed term tenancy

agreements, the last of which expired on September 30, 2011, and the tenant still resides in the rental unit. Rent in the amount of \$2,580.00 per month is currently payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1,200.00 as well as a pet damage deposit in the amount of \$1,200.00.

The landlord further testified that rental increases were served on the tenant over the years of the tenancy. At the outset of the tenancy, the rent was \$2,400.00 per month; on October 1, 2008 the rent increased to \$2,475.00 and on October 1, 2010 the rent increased to \$2,530.00 per month and further to \$2,580.00 on October 1, 2011. There was no rental increase in 2009.

The landlord also testified that the tenant failed to pay rent when it was due for the month of October, 2011 in the amount of \$2,580.00. The tenant further failed to pay rent for the month of November, 2011. On November 4, 2011, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. The landlord testified that the notice is dated November 4, 2011 and states that the tenant failed to pay rent in the amount of \$5,160.00 that was due on November 1, 2011, and contains an effective date of vacancy of November 16, 2011. The tenant has not paid any rent for the month of December, 2011 and the tenant has not paid any rent since the notice to end the tenancy was served.

The landlord also testified that the tenancy agreement provides for \$30.00 plus interest for each invalid or late payment of rent.

The landlord requests an Order of Possession, a monetary order for unpaid rent for October, November and December, 2011 as well as late fees in the amount of \$30.00 for each month, an order permitting the landlord to keep the deposits in partial satisfaction of the claim, and recovery of the \$50.00 filing fee for the cost of this application.

Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due, and if the tenant fails to do so, the landlord may, on any day after the date rent is payable under the tenancy agreement, serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The *Act* also states that service of the notice upon the tenant by posting it to the door of the rental unit is deemed to have been served 3 days after posting it. Once served, the tenant has 5 days to pay the rent in full or dispute the notice, and if the tenant fails to do either, the tenant is conclusively presumed to have

accepted that the tenancy ends on the effective date of the notice, which must be 10 days after the date the tenant is deemed to have been served.

In this case, I accept the testimony of the landlord, and I find that the notice was deemed to have been served upon the tenant on the 7th day of November, 2011 and ought to contain an effective date of vacancy of the 17th of November, 2011. The *Act* further states that incorrect dates on a notice are deemed to be the earliest date that complies with the *Act*. The tenant then had until November 12, 2011 to dispute the notice or pay the rent in full. The tenant did neither, and therefore, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on November 17, 2011. I find that the landlord is entitled to an Order of Possession.

I further find that the tenant is in arrears of rent for the months of October, November and December, 2011, and the landlord is entitled to a monetary order for unpaid rent for those months for a total of \$7,740.00. I refer to Residential Tenancy Policy Guideline 3 – Claims for Rent and Damages for Loss of Rent which states that non-payment of rent is a fundamental breach of a tenancy agreement. The guideline also states that, “In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.” In this case, it is clear that the tenant owes for October and November rent. With respect to rent for December, 2011, I find that if the tenant had chosen to end the tenancy at the time the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served on November 4, 2011, the tenant’s notice would not have been effective until the end of December, 2011, and therefore the landlord is entitled to a monetary order for December, 2011.

With respect to late fees, the regulations limit the amount of late fees a landlord may recover to \$25.00. I accept the testimony of the landlord that the tenancy agreement provides for late fees in the amount of \$30.00, however I find that the landlord is only entitled to the amount specified in the regulations, being a total of \$75.00.

The landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The *Act* also states that a landlord may only claim against a pet damage deposit for damages caused by a pet. The tenant has not yet moved from the rental unit, and no move-out condition inspection has taken place and therefore any damages caused by a pet are not yet known to the landlord. However, the *Act* also provides that:

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

- (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
- (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Therefore, I find that the landlord is entitled to keep the pet damage deposit and security deposit totalling \$2,400.00 in partial satisfaction of the landlord's claim.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. The tenant must be served with the Order of Possession.

I further order the landlord to keep the security deposit in the amount of \$1,200.00 and the pet damage deposit in the amount of \$1,200.00 and I grant a monetary order in favour of the landlord for the balance due of \$5,515.00.

These orders are final and binding on the parties and may be enforced.

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 06, 2011.

Residential Tenancy Branch