



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNDC, OLC, ERP RP, RR, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant had applied to cancel a Notice to End Tenancy for Unpaid Rent; monetary compensation for emergency repairs and other damage or loss under the Act, regulations or tenancy agreement; Orders for compliance and repairs; and, authorization to reduce rent. The landlord had applied for an Order of Possession and Monetary Order for unpaid rent.

The landlord appeared at the hearing but the tenant did not despite leaving the telephone conference call open for more than 20 minutes. The landlord confirmed receiving the tenant's application and had prepared to respond to it. Since the tenant did not appear at the hearing the tenant's application has been dismissed without leave to reapply.

The landlord testified that he served the tenant with the landlord's Application for Dispute Resolution and evidence via registered mail sent to the tenant at the rental unit on February 16, 2012. The landlord provided a registered mail tracking number as proof of service and confirmed the registered mail was not returned to him.

During the hearing the landlord requested that his application be amended to request retention of the security deposit in full satisfaction of the rent owed to him by the tenant. As the landlord was reducing his monetary claim against the tenant I accepted the amendment and considered his request to retain the security deposit.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The month to month tenancy commenced in October 2011 and the tenant is required to pay rent of \$850.00 on the 1st day of every month. The tenant paid a \$425.00 security deposit. The tenant failed to pay rent for January 2012 and on January 30, 2012 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) indicating \$850.00 was outstanding as of January 1, 2012 and a stated effective date of February 10, 2012. The landlord sent the Notice to the tenant via registered mail on January 31, 2012. The tenant did not pay the outstanding rent and did not dispute the Notice. The tenant did not pay any rent for the month of February 2012.

The landlord stated that the tenant had informed the landlord that he would be moving out today; however, the landlord requested an Order of Possession to enforce if necessary.

The landlord provided copies of the following documents as evidence for this proceeding: a rental application form completed for the tenant; the Notice; the registered mail receipt dated January 31, 2012; rent cheques that were returned NSF for the months of November 2011, December 2011 and January 2012; and, a letter apparently written by the tenant in November 2011 with respect to the NSF cheque for that month.

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 mailed to the tenant on January 31, 2012 it is deemed to be received five days later. The effective vacancy date is automatically changed to read February 15, 2012 in accordance with section 53 of the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on February 15, 2012 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.

Based upon the evidence before me, I find the landlord established that he is entitled to recover unpaid rent for January and February 2012 from the tenant; therefore, I grant the landlord's amended request to retain the security deposit in full satisfaction of the

unpaid rent. By way of this decision the landlord is authorized to retain the tenant's security deposit.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit in full satisfaction of the rent owed to the landlord for the months of January and February 2012.

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: February 29, 2012.

Residential Tenancy Branch