



Dispute Resolution Services

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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 and loss of rent, as well as authority to retain the security deposit. The tenants did not appear at the hearing. The landlord submitted two registered mail receipts, including tracking numbers, as proof of service of the hearing documents. The landlord affirmed that the hearing documents, including the landlord's evidence, were mailed to the tenants at the rental unit on February 8, 2012. The landlord affirmed that he last attended the rental unit on February 11, 2012 and observed the tenants still residing at the rental unit. I was satisfied the tenants were sufficiently served with notice of this hearing and I proceeded to hear from the landlord without the tenants present.

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 or loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenants signed a tenancy application form on January 25, 2009 indicating a monthly rent of \$1,400.00 and a security deposit of \$700.00 for a tenancy set to commence at the rental unit on February 1, 2009. The landlord acknowledged that a written tenancy agreement was not prepared or signed by the parties.

The landlord testified that the landlord had been receiving \$1,200.00 of the monthly rent directly from the Ministry of Social Development and the tenants would usually top up the balance of \$200.00 although several months the tenants did not pay the balance. The landlord explained that he did not pursue collection of the balance owed; however, failure to pay the entire monthly rent has resulted in the landlord taking this action. The landlord explained that the Ministry cheque did not arrive at the end of November 2011 for the December 2011 rent as expected. Rather, the \$1,200.00 payment was

eventually received December 23, 2011 and the landlord considered this payment to be in consideration of the outstanding rent for December 2011.

The landlord testified that the tenants promised to pay January 2012 rent on January 5, 2012 and again on January 15, 2012 but payment was not received. After several attempts to contact the tenants the landlord finally issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on January 29, 2012. The Notice indicates that \$1,400.00 is outstanding as of January 1, 2012 and has a stated effective date of February 8, 2012.

The landlord testified that he posted the Notice on the rental unit door on January 29, 2012 in the presence of a witness and the witness signed a Proof of Service document. After posting the Notice the tenants did not pay the outstanding rent or dispute the Notice. Nor have any monies been received for February 2012.

The landlord is seeking to recover \$2,800.00 from the tenants for the months of January 2012 and February 2012.

Documentary evidence provided by the landlord included: the "Application to Rent" form; the 10 Day Notice; the Proof of Service of the 10 Day Notice; and the registered mail receipts.

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.

As the Notice was posted on the door, it is deemed to be received by the tenants three days later. Accordingly, the effective date on the Notice is automatically changed to read February 11, 2012 pursuant to section 53 of the Act.

Since the tenants did not pay the outstanding rent or dispute the Notice I find the tenancy ended on February 11, 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 tenants.

Based upon the undisputed evidence before me, I find the landlord entitled to recover unpaid rent for January 2012 and February 2012 in the amount of \$2,800.00. I authorize the landlord to retain the tenants' 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:

January 2012 rent	\$ 1,400.00
February 2012 rent	1,400.00
Filing fee	50.00
Less: security deposit	<u>(700.00)</u>
Monetary Order	\$ 2,150.00

To enforce the Monetary Order it must be served upon the tenants and may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord is authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$2,150.00 to serve upon the tenants.

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 23, 2012.

Residential Tenancy Branch