



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This participatory hearing was scheduled to deal with the landlord's application for an Order of Possession and Monetary Order for unpaid rent pursuant to a decision issued February 14, 2012 under the Direct Request procedure. The tenant did not appear at the participatory hearing. The landlord testified that the tenant was served with notice of this participatory hearing in several ways: by posting the Notice of Hearing on the tenant's door February 16, 2012; by personal service on February 18, 2012 and by registered mail sent February 27, 2012. The landlord testified that the tenant abandoned the rental unit on February 28, 2012. I was satisfied the landlord served the tenant with the Notice of Hearing in accordance with the Act and instructions contained in the decision issued February 14, 2012. Therefore, I proceeded to hear from the landlord without the tenant present.

Preliminary and Procedural matters

As the landlord has regained possession of the rental unit the landlord no longer requires an Order of Possession and I do not provide with this decision.

The landlord verbally requested during the hearing that the application be amended to include unpaid rent for February 2012, the filing fee, and retention of the security deposit. I accepted the request for amendment and have considered the landlord's entitlement to these amounts further in this decision.

Issue(s) to be Decided

1. Is the landlord entitled to unpaid rent for January and February 2012?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy commenced May 1, 2004 and the tenant paid a \$295.00 security deposit on April 16, 2004. The tenancy agreement provides that the rent was \$590.00 payable on the 1st day of every month. Over the several years of tenancy the rent was increased by way of Notices of Rent Increase to the most recent amount of \$675.00. The tenant's rent cheque for January 2012 was returned for insufficient funds. A 10 Day Notice to end Tenancy for Unpaid Rent (the Notice) was posted on the tenant's door on January 24, 2012. The Notice indicates rent of \$675.00 was outstanding as of January 1, 2012 and has a stated effective date of February 3, 2012. The tenant did not pay the outstanding rent or dispute the Notice. The tenant abandoned the rental unit February 28, 2012.

With respect to the unsigned Notices of Rent Increase submitted into evidence the landlord explained that these are the office copies and that the Notices of Rent Increase given to the tenant were signed.

By way of the amended application the landlord is seeking to recover unpaid rent for January 2012 and February 2012; the filing fee paid for this application; as well as authority to retain the security deposit in partial satisfaction of the rent owed.

Documentary evidence provided by the landlord included copies of: the tenancy agreement; Notices of Rent Increase; the 10 Day Notice; a signed Proof of Service of the 10 Day Notice; the tenant's ledger account; and a registered mail receipt as proof of service of the original hearing documents sent to the rental unit on February 8, 2012.

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 that the tenancy will end on the effective date of the Notice. In this case, since the Notice was posted on the door it is deemed to be received three days later pursuant to section 90 of the Act. Accordingly, the effective date should read February 6, 2012 and the Notice is automatically changed to read February 6, 2012 pursuant to section 53 of the Act.

Based upon the undisputed evidence before me, I accept that the January 2012 rent cheque was returned for insufficient funds and the rent had been increased over the

years by way of serving the tenant with signed and dated Notices of Rent Increase. I further accept that the tenant was served the Notice as submitted by the landlord and the tenancy came to an end on February 6, 2012 because the tenant did not pay or dispute the Notice served upon her. Therefore, I find the landlord entitled to recover unpaid rent from the tenant for January and February 2012.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I calculate the accrued interest on the security deposit to be \$10.43. 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	\$ 675.00
February 2012 rent	675.00
Filing fee	50.00
Less: security deposit and interest	<u>(305.43)</u>
Monetary Order	\$1,094.57

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

Conclusion

The tenant has vacated the rental unit and the landlord no longer requires an Order of Possession. The landlord is authorized to retain the tenant's security deposit and accrued interest in partial satisfaction of the rent owed to the landlord. The landlord has been provided a Monetary Order for the balance of \$1,094.57 to serve upon the tenant and enforce as necessary.

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: March 09, 2012.

Residential Tenancy Branch