



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, loss of rent, and late fees. The tenants did not appear at the hearing. The landlord provided registered mail receipts, including tracking numbers, as proof of service of the hearing documents. The registered mail was sent to each tenant at the rental unit on February 21, 2012. The landlord confirmed the tenants still reside in the rental unit.

Having been satisfied the tenants were served with notice of this proceeding in a manner that complies with the Act, I proceeded to hear from the landlord without the tenants present.

At the commencement of the hearing, the landlord reduced the monetary claim to reflect a payment of \$1,440.00 from the tenants on February 23, 2012 in satisfaction of the outstanding rent for February 2012, late fee, and filing fee paid for this application. The landlord testified that a receipt was issued to the tenants for use and occupancy only. As the tenants have not paid rent for March 2012 the landlord confirmed he still seeks and Order of Possession.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to compensation for loss of rent and late fees for March 2012?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The one-year fixed term tenancy commenced May 1, 2011 and the tenants paid a \$717.50 security deposit. The tenants are required to pay rent of \$1,415.00 on the 1st day of every month. The tenancy agreement provides for a late fee up to \$25.00.

On February 7, 2012 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenants' door. The Notice indicates rent of \$1,390.00 was outstanding as of February 1, 2012 and has a stated effective date of February 17, 2012. The Notice indicates the outstanding rent was calculated as \$1,415.00 owed for rent, plus a \$25.00 late fee, less an overpayment of \$50.00.

The tenants did not pay the outstanding rent or dispute the Notice within five days of receiving it. The tenants continue to reside in the rental unit and have not paid any monies for March 2012.

The landlord testified that on February 23, 2012 the tenants paid \$1,440.00 to the landlord and the landlord issued a receipt for use and occupancy only. Thus, the landlord reduced the claim to reflect such payment and is only seeking to recover loss of rent and a late fee for March 2012 with this decision.

Documentary evidence provided for this proceeding included copies of: the tenancy agreement and addendum; the tenant's ledger account; the 10 Day Notice; Proof of Service of the 10 Day Notice; and, registered mail receipts for service of the hearing documents.

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.

I am satisfied the landlord served with the Notice upon the tenants by posting it on the door on February 7, 2012. Where a Notice is posted on the door it is deemed to be received three days later. Accordingly, the effective date on the Notice automatically changes to read February 20, 2012 pursuant to section 90 and 53 of the Act.

Since the tenants did not pay the outstanding rent or dispute the Notice I find the tenancy ended on February 20, 2012 and since the tenants continue to occupy the rental unit 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.

I accept that the tenants have satisfied the outstanding rent and late fee for February 2012 as well as the filing fee paid for this application. Accordingly, the landlord is not awarded for those amounts but since the tenants have continued to occupy the rental unit I award the landlord loss of rent for the month of March 2012 in the amount of \$1,415.00. I do not award a late fee to the landlord for the month of March as the tenancy came to an end on February 20, 2012.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the loss of rent awarded to the landlord. Therefore, the landlord is provided a Monetary Order for the balance owing of \$707.50.

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

Conclusion

The tenancy has ended for unpaid rent and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord is awarded loss of rent for the month of March 2012 and has been authorized to retain the security deposit in partial satisfaction of this award. Therefore, the landlord has been provided a Monetary Order for the balance of \$707.50 to serve upon the tenants 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 08, 2012.

Residential Tenancy Branch