



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenants/ landlords for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord was permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This tenancy originally started on September 01, 2010. This started as a fixed term tenancy and reverted to a month to month tenancy after the fixed term expired. Rent for this unit is

\$995.00 per month and is due on the first of each month. The tenant paid a security deposit of \$497.50 on August 26, 2010.

The landlords' agent testifies that the tenant failed to pay rent for February, 2012. The tenant also had non-sufficient funds (NSF) fees applied to his account for three NSF cheques issued for December, 2011 and January and February 2012. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on February 16, 2012. This was served upon the tenant in person on that day. This Notice states that the tenant owes rent of \$1,070.00 which includes the NSF fees. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on February 16, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has failed to pay rent for March, 2012. The total amount of outstanding rent and NSF fees are \$2,065.00. The landlords agent agrees the tenant attempted to pay a portion of the rent arrears on February 28, 2012 however the landlords agent states he would not accept this as the tenant attempted to pay only a portion of the outstanding amount and it was past the effective date of the 10 Day Notice.

The landlords' agent states the landlord has a clause in the tenancy agreement which notifies the tenant that NSF fees of \$25.00 will be applied for each returned cheque.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

The tenant does not dispute that he owes rent to the landlord for February and March and does not dispute the landlords request for NSF fees. The tenant testifies he did try to give the landlord some money at the end of February, 2012 but the landlord would not take it. The tenant states he does intend to move out but requires some time to find alternative accommodation.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the tenant to s. 26 of the *Residential Tenancy Act (Act)* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

It is therefore my decision that the landlord has established his claim for unpaid rent for February and March, 2012 to the sum of **\$1,990.00** and a Monetary Order has been issued to the landlord pursuant to s. 67 of the *Act*.

I further find the landlord has notified the tenant on the tenancy agreement that an NSF fee of \$25.00 will be charged for uncleared cheques. Consequently, the landlord is entitled to recover NSF fees to the total sum of **\$75.00** pursuant to s.67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$497.50** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent	\$1,990.00
NSF fees	\$75.00
Subtotal	\$2,065.00
Less Security Deposit	(-\$497.50)
Plus filing fee	\$50.00
Total amount due to the landlords	\$1,617.50

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant

had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,617.50**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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 20, 2012.

Residential Tenancy Branch