



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, loss of rent, and authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the tenant was served with the hearing documents via registered mail sent to the rental unit on April 25, 2012. I proceeded to hear from the landlord on the condition that she provide me with provide me a copy of the registered mail receipt and tracking information by noon of the day following the teleconference call. The landlord provided the proof of service documentation that I requested and upon review of the documentation I am satisfied the tenant received the registered mail on May 2, 2012.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent and loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The landlord testified to the following: The tenancy commenced in July 2011 and the tenant paid a \$462.50 security deposit. The tenant is required to pay rent of \$925.00 on the 1st day of every month. The tenant failed to pay rent for April 2012 and on April 19, 2012 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates the tenant failed to pay rent of \$925.00 on April 1, 2012 and the Notice has a stated effective date of April 29, 2012. The landlord testified that after serving the Notice the tenant did not pay the outstanding rent, did not pay any rent for May 2012, and continues to reside in the unit.

The landlord is seeking a Monetary Order of \$1,437.50 and authorization to retain the security deposit in satisfaction of the unpaid / loss of rent for April and May 2012 and the filing fee paid for this application.

The landlord provided a copy of the 10 Day Notice and registered mail receipt and tracking information as documentary evidence for this proceeding.

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 tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on April 29, 2012 under section 46 of the Act 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.

Under the Act, a tenant is required to pay rent when due in accordance with the terms of their tenancy agreement. Based upon the undisputed evidence before me, I find the landlord entitled to recover unpaid rent for April 2012 and loss of rent for May 2012 pursuant to the terms of the tenancy agreement and the provisions of the Act.

I authorize the landlord to retain the tenant's 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:

April 2012 unpaid rent	\$ 925.00
May 2012 loss of rent	925.00
Filing fee	50.00
Less: security deposit	<u>(462.50)</u>
Monetary Order	\$1,437.50

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

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 and has been provided a Monetary Order for the balance of \$1,437.50 to serve upon the tenant.

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: May 17, 2012.

Residential Tenancy Branch