



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 was scheduled to hear 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's agent provided a registered mail receipt as proof of service and testified that the registered mail was sent to the tenant at the rental unit address on July 5, 2012. As of July 11, 2012 a Final Notice was issued by Canada post and the mail still has not been picked up. The landlord's agent conformed that the tenant continues to reside at the rental unit. As a party cannot avoid service by refusing to pick up or accept registered mail, I was satisfied the tenant has been sufficiently served with notice of this preceding and I continued to hear from the landlord's agent without the tenant 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 and loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced several years ago and the tenant paid a \$700.00 security deposit. The tenant is required to pay rent of \$1,400.00 on the 1st day of every month. On June 11, 2012 the parties participated in a dispute resolution proceeding whereby the parties reached a settlement agreement. Pursuant to the settlement agreement the tenant was to pay June's rent by June 14, 2012 and a reduced rent of \$1,025.00 for July 2012. Further, the landlord was provided an Order of Possession effective July 31, 2012.

The landlord's agent submitted that the tenant failed to fulfill the terms of the settlement agreement. Specifically, the tenant has not paid rent for June or July 2012 as agreed. On June 19, 2012 the landlord's agent posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the door of the rental unit. The Notice indicates rent of

\$1,400.00 was outstanding and has a stated effective date of July 1, 2012. The tenant did not pay the outstanding rent or dispute the Notice and continues to occupy the rental unit.

The landlord requested a Monetary Order for the unpaid rent for June 2012 in the amount of \$1,400.00 and the agreed upon reduced rent of \$1,025.00 for July 2012. The landlord withdrew the request for loss of rent for August as such a loss has not yet been incurred.

The landlord also requested an Order of Possession effective two (2) days after service.

Documentary evidence provided for this proceeding included copies of: the 10 Day Notice; a signed Proof of Service for the 10 Day Notice; the dispute resolution decision issued June 11, 2012; an authorization letter for the landlord's agent, and, the registered mail receipt.

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 July 1, 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 tenant.

Based upon the undisputed evidence before me and the settlement agreement reached June 11, 2012 I find the landlord entitled to recover unpaid rent for the month of June 2012 in the amount of \$1,400.00 and the agreed upon amount of \$1,025.00 for July 2012. I further award the filing fee to the landlord.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord.

In light of the above, the landlord is provided a Monetary Order, calculated as follows, to serve upon the tenant and enforce as necessary:

June 2012 unpaid rent	\$ 1,400.00
July 2012 unpaid rent, as agreed	1,025.00
Filing fee	50.00
Less: security deposit	<u>(700.00)</u>
Monetary Order	\$ 1, 775.00

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 \$1,775.00 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: July 25, 2012.

Residential Tenancy Branch