Dispute Resolution Services

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, authority to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant at the rental unit via registered mail on June 15, 2012. The landlord testified that the tenant continues to occupy the rental unit. The landlord verbally provided a registered mail tracking number and testified that the mail was successfully delivered. I was satisfied the tenant has been sufficiently served with notification of this proceeding and I continued to hear from the landlord 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 landlord provided the following undisputed evidence: The one-year fixed term tenancy commenced October 1, 2011 and the tenant paid a security deposit of $780.00 on September 9, 2011. The tenant is required to pay rent of $1,560.00 on the 1st day of every month. The tenant has failed to pay rent when due under the tenancy agreement. On April 24, 2012 the sent a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) to the tenant via registered mail. The Notice was successfully delivered. The Notice indicates rent of $6,225.00 was outstanding as of April 1, 2012 and indicated an effective date of May 5, 2012. The tenant did not pay the outstanding rent or dispute the Notice and continues to occupy the rental unit.

The landlord's monetary claim of $10,920.00 is comprised of seven months of unpaid rent or loss of rent up to and including the month of July 2012.

The landlord provided a copy of the tenant's ledger; 10 Day Notice; and registered mail receipt for service of the 10 Day Notice 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.

Pursuant to section 90 of the Act, the Notice is deemed to be received by the tenant five days after mailing. Accordingly, the effective date of the Notice automatically changes read May 9, 2012 in accordance with section 53 of the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy legally ended on May 9, 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.

Upon consideration and review of all of the evidence before me, including the tenant's ledger, I find the landlord entitled to recover unpaid rent for the months up to and including the month of May 2012 and loss of rent for the months of June and July 2012 since the tenant has not vacated the rental unit. The landlord has satisfied me that the landlord is entitled to recover $10,920.00 for unpaid rent and loss of rent for the months up to an including July 2012 and I award that amount to the landlord with this decision.

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:

Unpaid and loss of rent	$ 10,920.00
Filing fee paid by landlord	100.00
Less: security deposit	(780.00)
Monetary Order	$ 10,240.00

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 security deposit and has been provided a Monetary Order for the balance of $10,240.00 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 05, 2012.

Residential Tenancy Branch