



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 response 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 tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on June 21, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. The landlord was permitted to provide additional evidence after the hearing ended. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

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

The landlord's agent testifies that this fixed term tenancy started on June 01, 2010 for one year and reverted to a month to month tenancy at the end of the fixed term. Rent was \$1,300.00 and a rent increase was applied on June 01, 2012 of \$56.00. Rent for this unit is now \$1,356.00 plus \$45.00 for parking per month and is due on the 1st of each month. The tenant paid a security deposit of \$650.00 on May 25, 2010.

The landlords' agent testifies that the tenant failed to pay rent for June, 2012. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on June 04, 2012. This was posted to the tenants' door and was deemed to have been served three days after posting. This Notice states that the tenant owes rent for June of \$1,401.00 which includes the parking fee of \$45.00. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on June 14, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has not paid rent for July, 2012 to the amount of \$1,356.00 plus \$45.00 parking. The landlords' agent has requested to amend the application to include unpaid rent for July as the tenant continues to have occupancy of the unit and has changed the locks to the unit preventing access by the landlord. The total amount of unpaid rent and is now \$2,712.00 and unpaid parking is \$90.00.

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

The landlord has provided a copy of the tenancy agreement, a copy of the 10 Day Notice to End Tenancy and a copy of the rent increase form.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent.

Section 26 of the Act 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.

Section 43(1)(a) of the Act states:

43 (1) A landlord may impose a rent increase only up to the amount
(a) Calculated in accordance with the regulations,

Section 43(5) of the Act states:

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

I have reviewed the tenancy agreement and find there is no mention on the agreement relating to a parking fee of \$45.00, I further find the rent increase form provided by the landlord shows a rent increase higher than permitted under the Act. The landlord has charged the tenant a rent increase of \$56.00 when the percentage allowed for 2012 is 4.3 percent making the permitted rent increase \$55.90.

Consequently I find that the tenant has failed to pay rent for June and July, 2012 of \$1,355.90 for each month and the landlord has not established a claim for parking fees. The total amount of unpaid rent is therefore \$2,711.80. I have allowed the landlord to amend his application to include unpaid rent for July, 2012 as the tenant continues to have possession of the rental unit and would be aware that rent is due on the first day of

each month. Consequently, the landlord will receive a monetary award to the sum of **\$2,711.80** 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 **\$650.00** in partial payment of the rent arrears.

As the landlord has been largely 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	\$2,711.80
Less Security Deposit	(-\$650.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$2,111.80

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. The notice is deemed to have been received by the tenant on June 07, 2012 and the effective date of the notice is amended to June 17, 2012 pursuant to section 53 of the *Act*.

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 amended effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,111.80**. 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 landlord 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: July 11, 2012.

Residential Tenancy Branch