



Dispute Resolution Services

Page: 1

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 July 12, 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 landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. 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

This fixed term tenancy started on May 01, 2012. Rent for this unit is \$675.00 per month. Rent is due on the first of each month. The tenant paid a security deposit of \$382.50 on April 19, 2012.

The landlord's agent testifies that the tenant failed to pay rent for July, 2012 of \$765.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on July 02, 2012. This was posted at the tenant's door and was deemed to have been served three days after posting. This Notice states that the tenant owes rent of \$765.00 plus \$25.00 for late fees. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on July 12, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. The landlord's agent testifies that the tenant had a \$5.00 credit from June's rent and this has been deducted from the late fees.

The landlord's agent testifies that the tenant was aware that late fees would be applied as it is documented in the tenancy agreement.

The landlord's agent testifies that the tenant paid \$350.00 on July 13, 2012 and this sum was accepted for use and occupancy only and did not reinstate the tenancy. A copy of the letter sent to the tenant informing the tenant of this and a copy of the rent receipt stating this have been provided in evidence.

The landlords have applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlords have also applied for an Order of Possession to take effect within two days of service.

Analysis

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.

Consequently I am satisfied with the undisputed evidence before me that the tenant has failed to pay the full rent owed for July, 2012 and the landlord is entitled to recover rent arrears and a late fee to the sum of **\$435.00** 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 **\$382.50** 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 and late fees	\$785.00
Less amount paid	(-\$350.00)
Plus filing fee	\$50.00
Less Security Deposit	(-\$382.50)
Total amount due to the landlords	\$102.50

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy pursuant to section 88 of the *Residential Tenancy Act*. The notice is deemed to have been received by the tenant on July 05, 2012 and the effective date of the notice is amended to July 15, 2012 pursuant to section 53 of the *Act*. The Notice states that the tenant has 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 pursuant to section 55 of the *Act*.

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 **\$102.50**. 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: August 01, 2012.

Residential Tenancy Branch