



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenant filed to dispute a 10 Day Notice to End tenancy for Unpaid Rent. The tenant failed to appear at the hearing despite leaving the teleconference call open at least 20 minutes. The landlord confirmed he had been served with the tenant's Application for Dispute Resolution and was prepared to deal with the tenant's application. Since the landlord appeared and the tenant failed to appear at the hearing scheduled to hear his application I dismissed the tenant's application without leave to reapply.

The landlord filed an application for an Order for Possession for unpaid rent and a Monetary Order for damage; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and/or pet deposit. The landlord testified that he personally served the tenant with the landlord's Application for Dispute Resolution on July 17, 2012. I was satisfied the tenant was sufficiently served with the landlord's Application for Dispute Resolution and I proceeded 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 damage, unpaid rent or damage or loss under the Act, regulations or tenancy agreement?
3. Is the landlord authorized to retain all or part of the security deposit and/or pet deposit?

Background and Evidence

The landlord testified as follows: The tenancy commenced March 10, 2012 and the tenant paid a \$225.00 security deposit and a \$100.00 pet deposit. The tenant is required to pay rent of \$450.00 on the 1st day of every month. The tenant failed to pay rent when due for July 2012 and on July 3, 2012 the landlord personally served the

tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) with an effective date of July 13, 2012.

The landlord testified that the tenant paid the outstanding rent on July 18, 2012. The landlord gave the tenant a receipt for the payment and told the tenant that he would be attending the hearing set for today. On July 30, 2012 the landlord issued a second receipt for the payment indicating the payment was accepted for "use and occupancy only".

The landlord applied for compensation of \$775.00 without any details of dispute. Upon enquiry the landlord believes the unit may be damaged and left unclean so the landlord requested authority to retain the security deposit and pet deposit. Further, the tenant continues to occupy the rental unit and did not pay any monies for days in August 2012. The landlord saw the tenant at the rental unit this morning and the tenant advised the landlord he would be vacating in the next day or two.

The landlord provided a copy of the 10 Day Notice and a signed Proof of Service for service of the 10 Day Notice as 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. In this case, the tenant filed to dispute the Notice within five days of receiving it but I have dismissed his application to cancel the Notice as set out in the Introduction section of this decision.

Having been provided evidence the landlord filed an Application for Dispute Resolution seeking an Order of Possession, the landlord verbally communicated to the tenant that the landlord would proceed with the hearing upon receiving the outstanding rent, and issued a receipt stating payment was for use and occupancy only, I am satisfied the tenancy was not re-instated by mutual consent.

Upon review of the Notice and the other evidence provided to me, I am satisfied the tenancy has ended for unpaid rent 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.

Having heard the tenant has since satisfied the outstanding rent for July 2012 I do not award the landlord unpaid rent for July 2012. As the landlord did not specify or provide

evidence as to losses other than rent in filing this application I have not considered awarding the landlord loss of rent for August 2012. Nor, have I considered an award for damage as the landlord has not yet established there is damage or the loss associated to any damage. The landlord does remain at liberty to make a subsequent application for loss of rent and/or compensation for damage as appropriate.

I award the filing fee to the landlord and the landlord is authorized to deduct \$50.00 from the tenant's security deposit in satisfaction of this award. The remainder the security deposit and the pet deposit shall remain in trust, to be administered in accordance with the Act.

Conclusion

The tenancy has ended and the landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to deduct \$50.00 from the tenant's security deposit to recover the filing fee paid for this application. The remainder of the security deposit and the pet deposit remain in trust, to be administered in accordance with the Act. The landlord remains at liberty to file a subsequent Application for Dispute Resolution for loss of rent and/or damage as appropriate.

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 02, 2012.

Residential Tenancy Branch