



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 dealt with a landlord's application for an Order of Possession for Unpaid Rent and a Monetary Order for unpaid rent; as well as, authorization to retain the tenant's security deposit. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant via registered mail at the rental unit on August 10, 2012 and that the tenant still resides in the rental unit. The landlord also testified that she observed the tenant receive the registered mail. The landlord verbally provided a registered mail tracking number as proof of service. Based upon the evidence before me, I accepted that the tenant was sufficiently served with notification of this hearing and I proceeded to hear from the landlords without the tenant present.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent?
2. Are the landlords entitled to a Monetary Order for unpaid rent?
3. Are the landlords authorized to retain the security deposit?

Background and Evidence

The tenancy commenced February 2012 and the tenant is required to pay rent of \$500.00 by the 1st day of every month. The tenant paid only \$55.00 of the \$250.00 security deposit. The tenant's husband and another male appear to reside with the tenant in the rental unit.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on June 22, 2012 and personally served it upon the tenant's husband. The 10 Day Notice has an effective date of July 2, 2012 and indicates \$150.00 was outstanding as of May 31, 2012. The tenant did not pay the outstanding rent and did not dispute the Notice. Nor did the tenant pay any rent for July, August or September 2012 yet the tenant continues to occupy the rental unit.

In addition, the landlord issued a 1 Month Notice to End Tenancy for Cause on July 1, 2012 and posted it on the tenant's door. The tenant did not dispute the 1 Month Notice.

The landlord testified that the tenant leaves notes for the landlord that she is moving out but she has yet to do so.

Although the landlord was of the belief she had provided a copy of the 10 Day Notice to the Residential Tenancy Branch in filing the Application for Dispute Resolution I requested the landlord provide another copy to me, along with a copy of the 1 Month Notice, after the teleconference call. The landlord provided these documents as instructed. I found the content of the Notices to End Tenancy to be consistent with the landlord's testimony during the hearing and I have relied upon them in making this decision.

In filing this application the landlord requested recovery of \$650.00 in unpaid rent. The landlord did not file an amended application or verbally request the application be amended to include loss of rent for subsequent months.

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.

The Act provides that a landlord may serve a document upon an adult person that apparently resides with the tenant. I accept that in giving the 10 Day Notice to the tenant's husband the tenant has been sufficiently served with the 10 Day Notice.

I note that the written tenancy agreement does not indicate which day the rent was payable; however, the landlord testified it was payable on the 1st of every month. Although the 10 Day Notice indicates the rent was payable on the 31st of May amending the 10 Day Notice to read June 1, 2012 would have affect the material facts of this case which are: the tenant failed to pay all of the rent payable for the month of June 2012 and the tenant did not pay the outstanding rent after receiving a 10 Day Notice.

Since the tenant did not pay the outstanding rent or dispute the 10 Day Notice I find the tenancy has ended for unpaid rent and the landlords are 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.

I find the landlords entitled to recover unpaid rent of \$650.00 for the months of June and July 2012, as claimed. I authorize the landlords to retain the \$55.00 paid by the tenant for the security deposit in partial satisfaction of the rent owed the landlord. I also award the landlords the filing fee paid for this application.

In light of the above, the landlords are provided a Monetary Order calculated as follows:

Unpaid Rent as claimed (June and July 2012)	\$ 650.00
Filing fee	50.00
Less: security deposit paid	<u>(55.00)</u>
Monetary Order	\$ 595.00

Conclusion

The landlords have been provided an Order of Possession effective two (2) days after service upon the tenant. The landlords have been authorized to retain the tenant's security deposit and have been provided a Monetary Order for the balance of \$595.00 to serve upon the tenant and enforce as necessary.

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: September 12, 2012.

Residential Tenancy Branch