



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 the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord provided registered mail receipts, including tracking numbers, dated August 22, 2012 as proof of service of the hearing documents upon each tenant. The landlord testified that the tenants continue to reside at the rental unit. I was satisfied the tenants have been sufficiently served with the hearing documents and I proceeded to hear from the landlord without the tenants present.

The amount claimed by the landlord on the Application did not include an amount for loss of rent for September 2012; however, the landlord clearly indicated she was seeking recovery of any loss of rent for September 2012 in the details of dispute section of the Application. I was satisfied the tenants have been put on notice that the landlord is seeking to recover loss of rent for September 2012 and I amended the claim accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for Unpaid Rent?
2. Is the landlord entitled to recover unpaid rent for August 2012?
3. Is the landlord entitled to recover loss of rent for September 2012?
4. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced February 1, 2012 and the tenants paid a security deposit of \$800.00. The tenants are required to pay rent of \$1,600.00 on the 1st day of every month for a fixed term set to expire January 31, 2013. In April 2012 the tenants started making partial rent payments and eventually fell into arrears. On August 2, 2012 the landlord personally served the male tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates rent of \$2,364.00 was outstanding as of

August 1, 2012 and has an effective date of August 12, 2012. The tenants paid \$500.00 towards the rental arrears on August 10, 2012 and another \$500.00 on August 25, 2012.

The landlord provided copies of the following documents as evidence for this proceeding: the tenancy agreement; rent receipts; the 10 Day Notice; a ledger; and, registered mail receipts.

After taking into account the partial payments made after the 10 Day Notice was issued, the landlord is seeking to recover unpaid rent of \$1,364.00 for August 2012 and loss of rent of \$1,600.00 for September 2012, plus the filing fee.

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.

Upon review and consideration of all of the undisputed evidence presented to me, I accept that the tenants did not pay the outstanding rent or dispute the Notice and I find the tenancy ended effective August 12, 2012. As the tenants continue to reside in the rental unit and the landlord is entitled to regain possession of the rental unit I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants.

I am further satisfied that the tenants have not paid \$1,364.00 of the rent owed for August 2012 and have not paid any monies for September 2012. Therefore, I grant landlord's request to recover these amounts from the tenants.

I authorize the landlord to retain the tenants' 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 rent – August 2012

\$ 1,364.00

Loss of rent – September 2012	1,600.00
Filing fee	50.00
Less: security deposit	<u>(800.00)</u>
Monetary Order	\$ 2,214.00

The landlord must serve the Monetary Order upon the tenants 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 tenants. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$2,214.00 to serve upon the tenants.

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 20, 2012.

Residential Tenancy Branch