



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 3:14 p.m. in order to enable them to connect with this teleconference hearing scheduled for 3:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the tenants' door on July 3, 2012. In accordance with sections 89(2) and 90 of the *Act*, I am satisfied that the 10 Day Notice was deemed served to the tenants on July 6, 2012, three days after its posting.

The landlord gave oral and written evidence that the landlord sent copies of the landlord's dispute resolution hearing package to the tenants by registered mail on August 31, 2012. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. As the landlord provided only a single tracking number, I asked the landlord for information as to how this single registered mailing was addressed. She gave sworn testimony that the registered letter containing the landlord's dispute resolution package was addressed to Tenant BZU. She testified that this package was returned to the landlord as unclaimed on September 21, 2012. Based on the landlord's evidence and section 89 and 90 of the *Act*, I am satisfied that Tenant BZU was deemed served with the landlord's dispute resolution hearing package on September 5, 2012, the fifth day after its mailing. However, I find that the landlord has not demonstrated that the other tenant was served with this hearing package. As such, I can only consider the landlord's claim for a monetary award against Tenant BZU.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced as a 6-month fixed term tenancy on January 28, 2012. At the expiration of the term on July 31, 2012, the tenancy continued as a periodic (month-to-month) tenancy. Monthly rent is set at \$1,120.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$560.00 security deposit paid on January 10, 2012.

The landlord identified \$1,400.00 as owing in the 10 Day Notice issued on July 3, 2012. Although the tenants did not pay any portion of their outstanding rent within 5 days of being served the 10 Day Notice, the landlord gave sworn testimony that they have made the following payments by Interac Debit:

July 16, 2012	\$720.00
August 7, 2012	\$900.00
September 13, 2012	\$500.00

The landlord testified that no receipts have been issued to the tenants for the above payments applied towards their rent.

The landlord's application for a monetary award of \$940.00 reflected the landlord's claim that as of August 31, 2012, \$320.00 in rent was owing for May 2012, \$400.00 was owing for July 2012, and \$220.00 was owing for August 2012.

Since the landlord applied for dispute resolution another \$1,120.00 became due on September 1, 2012. The landlord requested authorization to increase the amount of the monetary award requested to reflect the tenant's failure to pay September 2012 rent. I agreed to this request. I could not consider a further monetary award for rent for October 2012, as that rent had not become due at the time of this hearing.

Analysis

There is no dispute that the tenants did not pay all of the outstanding rent within 5 days of being served with the landlord's 10 Day Notice. However, since that time, the landlord has accepted three sizeable payments from the tenants that was applied towards their outstanding rent. The landlord did not issue receipts to the tenants advising them that their payments were received for use and occupancy only. Given the landlord's continuing acceptance of these significant payments over an extended period of time, I find that the landlord has continued this tenancy and the 10 Day Notice

issued on July 3, 2012 is no longer in force and cannot form the basis for the landlord's request for an Order of Possession. I dismiss the landlord's application for an end to this tenancy on the basis of the 10 Day Notice with the effect that this tenancy continues.

I find that there is undisputed evidence that the landlord is entitled to a monetary award against Tenant BZU, the only tenant who was served with the landlord's application for dispute resolution. I calculate the landlord's entitlement as follows:

Item	Amount
Unpaid Rent Owing as of the Date of Issuance of the 10 Day Notice of July 3, 2012	\$1,400.00
Less Tenants' Payment July 16, 2012	-720.00
Rent Owing as of August 1, 2012	1,120.00
Less Tenants' Payment August 7, 2012	-900.00
Rent Owing as of September 1, 2012	1,120.00
Less Tenants' Payment September 13, 2012	-500.00
Total Monetary Award for Unpaid Rent	\$1,520.00

Although the landlord's application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit for this tenancy plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I dismiss the landlord's application to end this tenancy on the basis of the 10 Day Notice and to obtain an Order of Possession on that basis without leave to reapply. This tenancy continues.

I issue a monetary award in the landlord's favour against Tenant BZU under the following terms which allows the landlord to recover unpaid rent and the filing fee for this application, less the tenants' security deposit:

Item	Amount
Unpaid Rent Owing as of the Date of Issuance of the 10 Day Notice of July 3, 2012	\$1,400.00
Less Tenants' Payment July 16, 2012	-720.00
Rent Owing as of August 1, 2012	1,120.00
Less Tenants' Payment August 7, 2012	-900.00
Rent Owing as of September 1, 2012	1,120.00
Less Tenants' Payment September 13, 2012	-500.00
Less Security Deposit	-560.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,010.00

The landlord is provided with these Orders in the above terms and Tenant BZU must be served with a copy of these Orders as soon as possible. Should Tenant BZU fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 03, 2012

Residential Tenancy Branch