



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 was convened by way of conference call in repose 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 August 24, 2012. Mail receipt numbers were provided by the landlord in evidence. The landlord 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 landlords 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 February 15, 2009 and reverted to a month to month tenancy at the end of the fixed term. Rent for this unit is \$1,100.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$550.00 on January 20, 2009.

The landlord testifies that the tenant failed to pay all the rent for June, 2012 leaving an unpaid balance of \$450.00. The tenant failed to pay rent for July and August 2012. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on August 02, 2012. This was placed in the tenant's mail slot and was deemed to have been served three days after posting. This Notice states that the tenant owed rent of \$515.00 which was due on August 01, 2012 and the landlord states this is for the balance of June's rent and late fees for May and April and June of \$75.00. The landlord served the tenant with another 10 Day Notice to End Tenancy for unpaid rent on August 07, 2012. This was placed in the tenant's mail slot and was deemed to have been served three days after posting. This Notice states that the tenant owed rent of \$1,165.00 which was due on August 01, 2012. The landlord explains that this includes a late fee of \$25.00 for August and there appears to be an accounting error. The tenant owed August rent of \$1,100.00 plus the late fee of \$25.00 and a fee of \$25.00 was also applied for a returned cheque. The landlord testifies that the amount should therefore have been \$1,150.00 not \$1,165.00. The landlord testifies that the tenant also failed to pay rent for July, 2012 but a 10 Day Notice was not issued at that time.

The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on August 17, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has failed to pay rent for September 2012. The landlord testifies that the total amount of outstanding rent is now \$3,750.00. The landlord has requested to amend the application to include unpaid rent for September as the tenant continues to reside in the unit.

The landlord seeks to recover the late fees of \$25.00 per month for April, May, June, July, August and September, 2012 to the sum of \$300.00 and an NSF fee of \$25.00 for August, 2012. The landlord also requests an Order to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord has requests an Order of Possession to take effect on, 2012.

The landlord has provided a copy of the tenancy agreement and a copy of both the 10 Day Notices to End Tenancy.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord.

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.

The landlord is required to provide sufficient evidence to meet the burden of proof that the tenant owes rent, late fees and NSF fees as claimed by the landlord. The landlord has shown that the tenant was late with the rent for June August and September, 2012 however the landlord has not shown that the tenant failed to pay rent for July, 2012 or that rent was late for April, May and July, 2012. Consequently, I find that the landlord is entitled to recover rent arrears for June, August and September, 2012. I have allowed the landlord to amend this application to include unpaid rent for September, 2012 as the tenant continues to live in the rental unit and would be aware that rent is due on the first day of each month. Consequently, the landlord will receive a monetary award to the sum of **\$2,650.00** for unpaid rent.

With regard to the landlords claim for late fees; the tenancy agreement informs the tenant that the landlord will charge the tenant late fees of \$25.00 for each month rent is late. I find the landlord has provided evidence to show that the tenants rent was late for June, August and September, 2012 but has no evidence to show the tenants rent was late for April, May and July, Consequently I limit the landlords claim for late fee to \$75.00 and dismiss the landlords claim for NSF fees for August as the landlord has no evidence to show that the tenants cheque was returned.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$550.00** in partial payment of the rent arrears.

As the landlord has been partially 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	\$2,650.00
Late fees	\$75.00
Less Security Deposit	(-\$550.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$2,225.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had 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 s. 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 **\$2,225.00**. 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 landlord effective **two days after service of this Order upon 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: October 03, 2012.

Residential Tenancy Branch