



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlord named two tenants in filing this application. Upon review of the tenancy agreement I confirmed that only one tenant signed the tenancy agreement. Therefore, I found the other respondent to be an occupant only and I amended the Application to exclude the occupant as a party to this proceeding.

The landlord requested the application be amended to include loss of rent for October 2012 since the tenant continues to occupy the rental unit and authorization to retain the security deposit in partial satisfaction of the rent owed. As the tenant was at the hearing and confirmed he continues to occupy the rental unit I found the request for amendment non-prejudicial to the tenant and I allowed the amendment.

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 unpaid rent and loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The one year fixed term tenancy commenced in December 2011 and a security deposit of \$770.00 was transferred from a previous tenancy agreement. The tenant is required to pay rent of \$1,440.00 on the 1st day of every month. The tenant failed to pay rent for August 2012 and September 2012 (except for a \$10.00 credit) and on September 2,

2012 the landlord placed a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) in a conspicuous place at the rental unit. The Notice indicates \$2,870.00 was outstanding and has a stated effective date of September 12, 2012. The tenant acknowledged receiving the Notice. The tenant did not dispute the Notice or pay the outstanding rent and continues to occupy the rental unit with his wife and child.

In addition to an Order of Possession the landlord is seeking to recover unpaid rent for August and September 2012 in the amount to of \$2,870.00 plus loss of rent in the amount of \$1,440.00 for the month of October 2012.

The tenant pointed to the death of a close family member and his wife's job loss as contributing factors to a financial crisis. The tenant understood that he and his family must vacate the rental unit as rent has not been paid but requested more time to do so. Although the tenant has been looking for alternative accommodation it has been difficult to find a place with room him, his wife, teenage daughter and pet. The tenant asked that I take into account that his family will become homeless if an Order of Possession is granted to the landlord with an effective date of two days. Further, to enforce such an Order of Possession will likely require the services of a bailiff. However, if the tenant were to be allowed to stay until November 1, 2012 the tenant would be in a much better position to secure new housing as the 1st day of the month is the date most landlords permit occupancy. The tenant also submitted that he is of the belief that there are other vacant units and the property is about to be re-developed, thus, the landlord is unlikely to re-rent this unit.

The landlord's agent submitted that while he was sympathetic to the tenant's plight he has an obligation to minimize the landlord's losses and, as such, is requesting an Order of Possession as soon as possible.

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.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy has ended and the landlord is entitled to regain possession of the rental unit. Therefore, I grant the landlord's request for an Order of Possession.

Pursuant to section 55(3) I have the authority to grant an Order of Possession before or after the effective date on a Notice and the Order takes effect on the date specified in the Order. Under this provision I am afforded discretion as to the effective date of the Order. I find my discretion is limited to what is reasonable in the circumstances. Further, my decision shall not be prejudicial to either party.

I accept that permitting the tenant to remain in the rental unit until November 1, 2012 shall afford the tenant sufficient time to find alternative accommodation and significantly reduce the likelihood the landlord will incur the costs to enforce the Order of Possession by way of a bailiff. Therefore, I provide the landlord with an Order of Possession effective November 1, 2012.

Based upon the undisputed evidence before me, I find the landlord entitled to recover unpaid rent for August and September 2012 in the amount of \$2,870.00. I further award the landlord loss of rent of \$1,440.00 for the month of October 2012 since the tenant continues to occupy the rental unit.

I authorize the landlord to retain the tenant's 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 & September 2012	\$ 2,870.00
October 2012 loss of rent	1,440.00
Filing fee	50.00
Less: security deposit	<u>(770.00)</u>
Monetary Order	\$ 3,590.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been provided an Order of Possession effective at 1:00 p.m. on November 1, 2012. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$3,590.00 to serve 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: October 18, 2012.

Residential Tenancy Branch