Dispute Resolution Services

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 tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant at the rental via registered mail on September 21, 2012 and that the tenant continues to occupy the rental unit. The registered mail was returned as unclaimed on October 12, 2012 at which time the landlord slid the hearing documents under the door of the rental unit.

Section 90 of the Act deems documents served five days after mailing even if the recipient refuses to accept or pick up the registered mail. Therefore, I am satisfied the tenant has been served with the hearing documents and I proceeded to hear from the landlord without the tenant present.

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?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The landlord submitted that the tenant failed to pay rent for the past three months and that on September 2, 2012 the landlord issued a 10 Day notice to End Tenancy for Unpaid Rent and posted it on the door and served it in person that day. The tenant did not dispute the Notice and continues to occupy the rental unit.

The landlord applied for $3,437.00 in unpaid rent including the month of October 2012.

I requested the landlord provide documentary evidence to support his claims as none were provided to the Branch prior to the hearing. The landlord provided a copy of the following:

- A tenancy agreement showing the tenancy started July 1, 2010 for a monthly rent of $859.00 due on the 1st of each month and a security deposit of $430.00;
- A Notice of Rent Increase issued April 30, 2012 to increase the rent to $880.00 starting August 1, 2012;
- A 10 Day Notice issued September 2, 2012 indicating $2,597.00 was outstanding as of September 1, 2012 and an effective date of September 12, 2012; and,
- A ledger showing payments and credits from January 2012 onwards, including a monthly credit of $39.00 for cleaning hallways, which increased to $40.00 per month starting August 2012?

On the ledger the landlord indicates the landlord is owed $3,417.00 including October 2012 rent. I have amended the claim to reflect the lesser amount of $3,417.00.

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. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Upon review of the tenancy agreement, Notice of Rent Increase and ledger I find the tenant failed to pay rent when due for the months up to September 2012 and the landlord is entitled to recover the unpaid rent. Since the tenant failed to vacate the rental unit by the effective date of the Notice I further find the landlord entitled to recover loss of rent for the month of October 2012. Therefore, I award the landlord the full amount claimed of $3,417.00.

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/Loss of rent to October 2012	$ 3,417.00
Filing fee	50.00
Less: security deposit	(430.00)
Monetary Order	$ 3,037.00

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 two (2) days after service upon the tenant. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of $3,037.00 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: October 26, 2012.

Residential Tenancy Branch