



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. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as proof of service of the hearing documents. The landlord testified the hearing documents were sent to the tenant at the rental unit within three days of making this application and the tenant continues to occupy the rental unit. I was satisfied the tenant has been sufficiently served with notice of these proceedings. Accordingly, I proceeded to hear from the landlord without the tenant present.

The landlord stated that the landlord waives entitlement to a Monetary Order but requests authorization to retain the security deposit in satisfaction of the rent owed to the landlord. I found this request to reduce the monetary claim to be non-prejudicial to the tenant and I agreed to consider the landlord's request.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Has the landlord established that the tenant owes the landlord rent in excess of the security deposit?

Background and Evidence

The tenancy commenced December 1, 2010. The landlord collected a security deposit of \$438.00. The landlord is a housing society and the rent payable is based upon income and number of occupants residing in the rental unit.

In May 2012 the tenant's parents moved in to the rental unit which resulted in the rent due to the landlord to increasing from \$570.00 to \$1,149.00 (in increase of \$579.00) for the months of May and June 2012. The landlord collected payments of only \$570.00 for these months and then issued a 10 Day Notice to End Tenancy for Unpaid Rent indicating \$1,158.00 in rent was outstanding as of June 1, 2012.

The landlord subsequently waived the rent increase for May 2012, leaving \$579.00 outstanding for June 2012.

For the month of July 2012 the rent returned to \$570.00 as the tenant's parents left the rental unit; however, no rent was paid to the landlord for July 2012.

The landlord tried to work out a payment plan with the tenant in August 2012; however, the tenant would not sign the repayment agreement and did not keep appointments with the landlord. The landlord issued another 10 Day Notice to End Tenancy for Unpaid Rent on September 7, 2012 indicating \$1,149.00 was outstanding and sent it to the tenant via regular mail. The Notice has a stated effective date of September 22, 2012

The landlord submitted that the tenant received the Notice because the tenant's MLA contacted the landlord in response to the Notice. However, the tenant did not pay the outstanding rent or file to dispute the Notice.

The landlord requested an Order of Possession with an effective date of November 15, 2012. The landlord requested authority to retain the security deposit in satisfaction of the rent owed to the landlord.

In support of this application the landlord provided copies of: the tenancy agreement; the 10 Day Notices issued in June and September 2012; and various correspondence to the tenant including repayment agreements.

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 November 15, 2012 as requested by the landlord.

Based upon the evidence before me, I accept that the tenant owes the landlord rent in excess of the security deposit; therefore, I authorize the landlord to retain the security deposit, as requested.

Conclusion

The landlord has been provided an Order of Possession effective November 15, 2012. The landlord has been authorized to retain the security deposit in satisfaction of the rent owed to the landlord by the tenant.

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 31, 2012.

Residential Tenancy Branch