



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNR, MNSD, FF

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order for unpaid rent, and to keep all or part of the security deposit.

Although served with the Application for Dispute Resolution and Notice of Hearing sent registered mail on September 20, 2012, a Canada post tracking number was provided as evidence of service, the tenant did not appear. On October 11 and 12, 2012, the tenant submitted documentary evidence for today's hearing.

Based on the above, I find that the tenant has been duly served in accordance with the Act.

The landlord gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order for unpaid rent?
Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

Based on the testimony of the landlord's agent, I find that the tenant was served with both pages of a 2 month notice to end tenancy for landlord use of property on June 28, 2012, by posting to the door of the rental unit. The notice informed the tenant that they have fifteen days to dispute the notice. The notice also explains if the tenant does not file an application to dispute the notice within fifteen days, they are presumed to have accepted the notice and must move out of the rental unit on August 31, 2012.

The landlord testified the cheque #260 submitted by the tenant was originally dated June 11, 2012, and changed by the tenant to July 1, 2012. The landlord stated this cheque was to cover the unpaid rent for June 2012. The landlord stated she did not receive an additional cheque in July 2012, to make up for July's unpaid rent.

The landlord testified she received rent cheques for August, September and October 2012, however, she was not reinstating the tenancy and this was noted on the back of the tenant's cheque.

Filed in evidence by the tenant is a cheque #260, the original date on the cheque was June 11, 2012 and change to July 1, 2012. Filed in evidence are cheques for August, September, and October, 2012. No rent cheque was included for June 2012.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenant did not apply to dispute the Notice and is therefore conclusively presumed under section 49(9) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

The undisputed testimony of the landlord was the cheque #260 issued by the tenant was originally date June 11, 2012, was change by the tenant to July 1, 2012, this is supported by the documentary evidence submitted. The evidence of the landlord was that cheque was to cover unpaid rent for June 2012 - not rent for July 2012, and no additional rent cheque for July 2012, was received. Therefore, I find the landlord is entitled to unpaid rent for July 2012, in the amount of **\$875.00**.

Under Section 51 of the Act the tenant who receives a notice to end for landlord's use of property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is equivalent of one month's rent payable under the tenancy agreement. As the effective date has passed and the tenant has not received that entitlement as required by the Act, I find the landlord's monetary claim for unpaid rent in the amount of \$875.00, is offset with the one month's rent equivalent of \$875.00 that the tenant was entitled to receive. Therefore, I find the landlord has been compensated for unpaid rent and the tenant has been compensated with the one month's rent equivalent.

As the landlord has been successful with their application, I authorize the landlord to deduct the amount of \$50.00 from the tenant's security deposit in full satisfaction of the claim.

Conclusion

The tenant did not file to dispute the notice to end tenancy for landlord use of property issued on June 28, 2012. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession. The landlord is entitled to a monetary order for unpaid rent for July 2012, however, that amount is offset by the tenant rights to compensation under section 51 of the Act.

The landlord is authorized to deduct \$50.00 for the tenant's security deposit to recover the cost of filing this application.

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 24, 2012.

Residential Tenancy Branch