



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, 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, late fees, and loss of rent. The tenant did not appear at the hearing. The landlord testified that the tenant was served with the hearing documents via registered mail sent to the rental unit on October 19, 2012. The landlord confirmed that the tenant has not returned possession of the rental unit to the landlord and that the tenant's brother was seen outside the rental unit approximately three weeks ago but that there has been no observation of recent activity at the rental unit. The landlord provided a registered mail tracking number as proof of service. I was satisfied the tenant likely resided at the rental unit at the time of mailing the hearing package and I proceeded to hear from the landlord in the absence of the tenant.

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, late fees, and loss of rent?

Background and Evidence

The tenancy commenced April 8, 2012 and the tenant paid a \$550.00 security deposit. The tenant was required to pay rent of \$1,100.00 on the first day of every month. The tenancy was for a fixed term set to expire September 30, 2012 and then convert to a month-to-month tenancy. The tenancy agreement provides for late fees of \$20.00.

The tenant failed to pay rent for October 2012 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the rental unit door on October 3, 2012. The Notice indicates \$1,100.00 was outstanding as of October 1, 2012 and has a stated effective date of October 13, 2012. The tenant did not pay the outstanding rent and did not file to dispute the Notice.

The landlord has not posted a Notice of Entry to determine if the tenant has since vacated the rental unit.

The landlord requested compensation for unpaid rent or loss of rent and late fees for the months of October, November and December 2012.

As documentary evidence the landlord provided copies of: the tenancy agreement, the 10 Day Notice; Proof of Service of the 10 Day Notice; and, the tenant's ledger.

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.

As the Notice was posted on the door it is deemed to be received three days later under section 90 of the Act. Therefore, the effective date is automatically changed to read October 16, 2012 pursuant to section 53 of the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended October 16, 2012 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.

A tenant is required to pay rent in accordance with their tenancy agreement and the Act. A landlord may also require payment of late fees under the Residential Tenancy Regulations provided such a term is in the tenancy agreement and the term is otherwise compliant with the Regulations.

Upon review of the evidence before me, I find the landlord entitled to recover unpaid rent of \$1,100.00 and a late fee of \$20.00 for the month of October 2012. I also award the landlord loss of rent for the month of November 2012 since the tenant did not end the month to month tenancy in accordance with the requirements of the Act. I also award the landlord the filing fee paid for this application.

I do not award a late fee for November 2012 since the tenancy came to an end in October 2012. I also dismiss the landlord's claim for anticipated loss of rent for December 2012 as the landlord has not suffered a loss for that month. I do not give the landlord leave to reapply for December 2012 as the landlord has not taken steps to determine if the tenant has vacated the rental unit so as to commence efforts to re-rent the unit.

The landlord did not request authorization to retain the security deposit and it remains in trust for the tenant, to be administered in accordance with the Act.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

October 2012 unpaid rent	\$ 1,100.00
October 2012 late fee	20.00
November 2012 loss of rent	1,100.00
Credit per ledger as of Sept 30, 2012	(0.67)
Filing fee	<u>50.00</u>
Monetary Order	\$ 2,269.33

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 provided a Monetary Order for \$2,269.33 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: November 22, 2012.

Residential Tenancy Branch