



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; and, authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord provided four registered mail receipts, including tracking numbers, as proof of sending the hearing package and evidence package to each of the tenants at the rental unit on November 4, 2012 and November 25, 2012 respectively. The landlord confirmed the tenants are still occupying the rental unit. I was satisfied the tenants have been sufficiently notified of this proceeding and I continued to hear from the landlord without the tenants 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 and if so, the amount?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced December 1, 2010 and the tenants paid a \$387.50 security deposit. Under the tenancy agreement the tenants were required to pay rent of \$775.00 on the 1st day of every month. Effective May 1, 2012 the rent was increased to \$808.00 by way of a Notice of Rent Increase.

The landlord served a 10 Day notice to End Tenancy for Unpaid Rent (the Notice) by giving it to the female tenant in the presence of the male tenant on October 19, 2012. The Notice indicates the tenants owed \$1,303.50 in rent as of October 1, 2012 and has a stated effective date of October 29, 2012.

After serving the Notice, the tenants made the following payments which the landlord accepted and issued receipts for "use and occupancy only":

November 1, 2012

\$ 405.00

November 15, 2012	\$ 375.00
November 15, 2012	\$ 345.00

The landlord requested the monetary claim be amended to reflect the loss of rent for November 2012 and December 2012 since the tenants continue to occupy the rental unit, and, the partial payments received after this Application was filed. The amended claim \$1,794.50.

As documentary evidence the landlord provided copies of: relevant pages of the tenancy agreement; the Notice of Rent Increase; the tenants' ledger from October 2011 through November 2012; the 10 Day Notice; receipts issued for payments received in November 2012 and, registered mail receipts.

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.

I accept that the tenants were served with the 10 Day notice on October 19, 2012 and did not pay the outstanding rent or dispute the Notice within five days. Therefore, I find the tenancy ended on the effective date of October 29, 2012.

I find the landlord accepted three payments totalling \$1,125.00 after the effective date of the Notice for use and occupancy only and did not reinstate the tenancy. Therefore, I find 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 tenants.

Upon review of the tenants' ledger and other evidence provided to me, I find the landlord entitled to recover the unpaid rent as claimed. I further award the landlord loss of rent for the months of November 2012 December 2012 since the tenants continue to occupy the rental unit. I have offset the partial payments made by the tenants in November 2012 against the rent and loss of rent awarded to the landlord.

I authorize the landlord to retain the tenants' 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 – per 10 Day Notice and ledger	\$ 1,303.50
Loss of Rent – November 2012	808.00
Less: partial payments	(1,125.00)
Loss of Rent – December 2012	808.00
Filing fee	50.00
Less: security deposit	<u>(387.50)</u>
Monetary Order	\$ 1,457.00

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

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession for unpaid rent effective two (2) days after service upon the tenants. The landlord is authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,457.00 to serve upon the tenants 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: December 05, 2012.

Residential Tenancy Branch