



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent; and, authorization to retain all or part of the security deposit. The tenant did not appear at the hearing. The landlord testified that he personally served the hearing documents upon the tenant on November 22, 2012 in the lobby of the residential property. Based upon the landlord's undisputed testimony, I accepted the tenant was sufficiently 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?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain all or part of the security deposit?

Background and Evidence

Pursuant to a written tenancy agreement the tenancy commenced September 1, 2012 and the tenant paid a \$800.00 security deposit. The tenant is required to pay rent of \$1,600.00 on the 1st day of every month for a fixed term set to expire August 31, 2013. The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the door of the rental unit on November 5, 2012. The Notice has a stated effective date of November 18, 2012 and indicates rent of \$1,650.00 was outstanding for October and November 2012.

In filing this application the landlord submitted that the tenant failed to pay rent of \$50.00 for October 2012 and \$1,400.00 for the month of November 2012.

After serving the tenant with this Application the tenant introduced the landlord to his roommate. The tenant's roommate gave the landlord \$1,200.00 on December 2, 2012 towards the rental arrears and paid the rent owed for December 2012. The landlord does not know the name of the tenant's roommate.

The landlord was agreeable to an Order of Possession effective December 31, 2012 to reflect the payment for use and occupancy for the month of December 2012.

The landlord is currently owed rent of \$250.00 for the months of October and November 2012 and seeks to deduct this amount from the security deposit.

The landlord provided a copy of the written tenancy agreement and the 10 Day Notice as documentary evidence for this proceeding.

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 the undisputed evidence that the landlord posted the Notice on the tenant's door on November 5, 2012. Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on November 19, 2012. As the landlord had put the tenant on Notice that he intended to end the tenancy by serving the tenant with the Application for Dispute Resolution I do not find the tenancy was reinstated. Rather, I am satisfied the tenancy has ended yet the landlord has granted use and occupancy until the end of December 2012. Therefore, I provide the landlord was an Order of Possession effective December 31, 2012.

I find the landlord entitled to recover balance of the unpaid rent in the amount of \$250.00. I further award the \$50.00 filing fee to the landlord. Therefore, I authorize the landlord to deduct a total of \$300.00 from the tenant's security deposit in satisfaction of these awards. The balance of the security deposit remains in trust for the tenant, to be administered in accordance with the Act.

Conclusion

The landlord is provided an Order of Possession effective December 31, 2012. The landlord is authorized to deduct \$300.00 from the tenant's security deposit in satisfaction of the rent owed for October and November 2012.

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 20, 2012.

Residential Tenancy Branch