



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession and a Monetary Order for unpaid rent and loss of rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that he personally served the hearing documents to the tenant at the rental unit on November 22, 2012. I was satisfied the tenant has been sufficiently served with the hearing documents in a manner that complies with the Act 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 and loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced in December 2009. The landlord personally served the tenant with a Notice of Rent Increase on November 28, 2011 to increase the rent from \$665.00 to \$691.00 starting March 1, 2012. Hydro is not included in rent.

Despite the Notice of Rent Increase the tenant continued to pay rent of \$655.00. The tenant also failed to pay the landlord hydro. On October 2, 2012 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) with a stated effective date of "September 12, 2012". The Notice indicates the tenant failed to pay rent of \$234.00 as of October 1, 2012 and utilities of \$632.12 for which a written demand was issued on September 1, 2012.

The landlord testified that the tenant did not pay any monies towards the outstanding rent or utilities indicated on the Notice and has not paid any monies towards rent for November or December 2012. The landlord confirmed that the tenant continues to occupy the rental unit.

The landlord seeks an Order of Possession effective as soon as possible. The landlord applied to recover the unpaid rent and loss of rent up to and including the month of December 2012. The landlord did not request compensation for hydro.

Included in the landlord's documentary evidence were copies of: the 10 Day Notice; Notice of Rent Increase dated November 28, 2011; and, several utility bills.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent and/or utilities 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 and/or utilities or does not file to 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.

Based upon the undisputed evidence before me, I accept that the tenant was served with the 10 Day Notice on October 2, 2012 as stated by the landlord. I am also satisfied that the tenant did not pay the amount indicated on the Notice as outstanding or file to dispute the Notice. Therefore, I find the tenant is conclusively presumed to have accepted that the tenancy would end.

Where a Notice to End Tenancy has an incorrect effective date, pursuant to section 53 of the Act, the effective date is automatically changed to comply with the Act. Accordingly, the effective date for the 10 Day Notice issued October 2, 2012 automatically changes to read October 12, 2012.

In light of the above, I find the tenancy ended October 12, 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.

Based upon the evidence before me I find the landlord entitled to recover unpaid rent of \$26.00 per month for the eight months since the Notice of Rent Increase came into effect. I calculate the unpaid rent to be \$208.00 [(\$691.00 – \$665.00) x 8 months].

Since the tenant continues to occupy the rental unit I also award the landlord loss of rent of \$691.00 per month for November and December 2012. I also award the filing fee to the landlord.

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

Unpaid rent – March through October 2012	\$ 208.00
Loss of Rent – November 2012	691.00
Loss of Rent – December 2012	691.00
Filing fee	<u>50.00</u>
Monetary Order	\$1,640.00

The landlord is authorized to retain the security deposit in partial satisfaction of the Monetary Order and may enforce the balance of the Monetary Order in Provincial Court (Small Claims) as an Order of that court.

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 in the amount of \$1,640.00 to serve upon the tenant. The landlord is authorized to retain the security deposit in partial satisfaction of the Monetary Order and may enforce the balance outstanding in Provincial Court (Small Claims).

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 27, 2012.

Residential Tenancy Branch