



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's amended application for an Order of possession for unpaid rent and a Monetary Order for unpaid rent, loss of rent, and authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

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 the amounts claimed?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The parties executed a tenancy agreement for a fixed term tenancy set to commence November 1, 2012 and end on October 31, 2013. The tenant paid a security deposit of \$420.00. The rental unit was not ready for occupancy on November 1, 2012. Rather, the unit was ready for occupancy starting November 10, 2012 but the tenant was unavailable on that date and the tenant was given possession of the unit on November 16, 2012. The tenant has not paid rent since the tenancy began and continues to reside in the rental unit.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) and posted it on the tenant's door on November 26, 2012. The Notice indicates the tenant failed to pay rent of \$612.50 on November 10, 2012. The Notice has a stated effective date of December 9, 2012. The tenant did not pay the outstanding rent or file to dispute the Notice.

The landlord requested unpaid and loss of rent from the tenant from November 10, 2012 through January 31, 2013. In addition, the landlord requested anticipated loss of rent for February 2013 and charges for cleaning, parking passes, and FOB's.

The tenant was of the position that rent was payable starting November 16, 2012 as that is the date he was provided possession of the unit. The tenant acknowledged that the unit was ready for occupancy November 10, 2012 but he was out of town on that date and was of the belief that it was acceptable that he start paying rent when he was provided possession upon his return. The tenant also stated he has the parking passes and FOB's and is prepared to return those to the landlord.

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.

It was undisputed that the tenant was served with a 10 Day Notice and the tenant did not pay the outstanding rent or dispute the Notice with five days of receiving the Notice. Pursuant to section 46 of the Act I find the tenancy ended on the stated effective date of December 9, 2012. Accordingly, the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

It was undisputed that the landlord was unable to provide possession of the unit to the tenant on November 1, 2012, the date agreed upon in the tenancy agreement. While the landlord may have had the unit suitable for occupation on November 10, 2012 I do not find there is sufficient evidence to indicate the tenant agreed to take possession on that date and start paying rent on that date. Therefore, I find the landlord entitled to start receiving rent on November 16, 2012 as this is the mutually agreed upon date of possession.

Under the tenancy agreement the tenant was required to pay rent on December 1, 2012 and failed to do so. Therefore, I award the landlord unpaid rent for December 2012.

Since the tenant has continued to occupy the rental unit in January 2013 I am satisfied the landlord has suffered a loss of rent of January 2013 due to the tenant's actions. Therefore, I award the landlord loss of rent for January 2013.

The remainder of the landlord's claims are anticipated losses and those claims are dismissed with leave to reapply.

I award the filing fee to the landlord and authorize the landlord to retain the security deposit.

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

Unpaid rent: November 16 – 30, 2012	\$ 437.50
Unpaid rent: December 2012	875.00
Loss of rent: January 2013	875.00
Filing fee	50.00
Less: security deposit	<u>(420.00)</u>
Monetary Order	\$ 1,817.50

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

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,817.50 to serve upon the tenant.

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: January 15, 2013

Residential Tenancy Branch

