



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 was scheduled to deal with a landlord's application for an Order of Possession and a Monetary Order for unpaid rent. 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.

I determined that the landlord had not served the majority of her evidence upon the tenant after filing this Application and I excluded the documentary evidence from consideration except for the 10 Day Notice that the tenant confirmed receiving. Both parties were provided the opportunity to provide relevant verbal testimony in support of their respective positions.

During the hearing the landlord requested she be authorized to recover the unpaid rent from the security deposit rather than receive a Monetary Order. I found this request non-prejudicial to the tenant and allowed the Application to be amended to reflect this request.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord authorized to made deductions from the security deposit in satisfaction of the unpaid rent?

Background and Evidence

The tenancy agreement requires the tenant to pay rent of \$900.00 on the 14th day of every month plus 33% of hydro bills. I heard that the tenant's requirement to pay a portion of hydro was later reduced to 20%. On December 17, 2012 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door. The Notice indicated that the tenant owed \$900.00 in rent as of December 14, 2012. On December 22, 2012 the landlord received \$656.13 from the tenant.

The landlord filed this Application for Dispute Resolution on December 27, 2012. The tenant gave the landlord a cheque for \$900.00 on January 14, 2012 for the rental period of January 14 – February 13, 2013.

The landlord requested recovery of the \$243.87 shortfall in rent from the tenant's security deposit.

The tenant submitted that he withheld monies from rent as he was not provided sufficient heat in the rental unit. He calculated how much he had paid to the landlord for hydro in 2012, plus a sink plug, and deducted that sum from his rent payment in December 2012. The tenant acknowledged that he did not have the landlord's consent to make such a deduction and he did not have the authorization of an Arbitrator to do so. The tenant did not file to dispute the 10 Day Notice and indicated he does not object to returning vacant possession of the rental unit to the landlord on or before February 13, 2013.

Analysis

Under section 26 of the Act a tenant must pay rent when due in accordance with the terms of their tenancy agreement, unless they have the legal right to withhold rent, and must pay rent even if the landlord has violated the Act, regulations or tenancy agreement. The Act provides for specific circumstances when a tenant may make deductions from rent including: authorization by an Arbitrator, consent of the landlord, and, overpayment of rent or security deposit. As the parties were informed during the hearing, the dispute before me did not include a claim for loss of heat by the tenant. Rather, such a claim must be made by the tenant by way of his own Application for Dispute Resolution. I understand the tenant has filed an Application for Dispute Resolution set for hearing February 7, 2013; however, without the prior authorization of an Arbitrator, I find the tenant did not present a basis for withholding \$243.87 from rent due for December 2012.

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 by the tenant three days later. Accordingly, the effective date automatically changes to read December 30, 2012 pursuant to sections 46 and 53 of the Act.

Since the tenant did not pay the outstanding rent in full or dispute the Notice I find the tenancy ended on December 30, 2012 and the landlord is entitled to regain possession of the rental unit. I do not consider the tenancy reinstated as the landlord had already served the tenant with notice of her intent to request an Order of Possession when he presented her with payment on January 14, 2013. However, taking into account the tenant has paid for use and occupancy until February 13, 2012 I provide the landlord with an Order of Possession that is effective on that date.

Considering the tenant does not have authorization or consent to made deductions from rent I find the landlord entitled to recover unpaid rent in the amount of \$243.87. I further award the landlord recovery of the \$50.00 filing fee paid for this application. Therefore, I authorize the landlord to deduct a total of \$293.87 from the tenant's security deposit in satisfaction of this claim.

Conclusion

The landlord is provided an Order of Possession effective February 13, 2013. The landlord has been authorized to deduct \$293.87 from the tenant's security deposit.

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 24, 2013

Residential Tenancy Branch

