



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 convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent, an Order of Possession because the tenant breached an agreement with the landlord; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord withdrew his application for an Order of Possession because the tenant breached an agreement with the landlord.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, and was delivered in person to the tenant on December 14, 2012.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This month to month tenancy started on December 15, 2010. Rent for this unit is \$1,200.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$600.00 on January 15, 2011.

The landlord testifies that the tenant failed to pay rent for September, October and November, 2012 to a sum of \$3,600.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on October 15, 2012. This was posted to the tenants' door and was deemed to have been served three days after posting. This Notice states that the tenant owes rent of \$3,600.00 which was due on October 15, 2012. The landlord testifies that he had included unpaid rent for November in this total. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on October 30, 2012.

The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has failed to pay all the rent for December 2012 leaving an unpaid balance of \$600.00 and for January 2013 leaving an unpaid balance of \$600.00. The total amount of outstanding rent is now \$4,800.00. The landlord has requested to amend the application to include unpaid rent for December and January as the tenant continues to reside in the unit. The landlord testifies that when the tenant paid \$600.00 in December and again in January the landlord informed the tenant that he still had to move out if he could not pay all the rent arrears.

The landlord requests an Order to retain the tenants' security deposit of \$600.00 in partial payment towards the rent arrears. The landlord also requests an Order of Possession to take effect on January 31, 2013.

The landlord has provided a copy of the tenancy agreement and a copy of the 10 Day Notice to End Tenancy in evidence.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, I find that the tenant has failed to pay rent for September, October and November, 2012 of \$3,600.00 and for December, 2012 and January 2013 of \$1,200.00. The landlord is entitled to recover these rent arrears pursuant to s. 67 of the Act. I have allowed the landlord to amend this application to include unpaid rent for December and January as the tenant continues to live in the rental unit and would be aware that rent is due on the first day of each month. Consequently, the landlord will receive a monetary award to the sum of **\$4,800.00**.

I order the landlords pursuant to s. 38(4)(b) of the Act to keep the tenant's security deposit of **\$600.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the Act.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$4,800.00
Less Security Deposit	(-\$600.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$4,250.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,250.00**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **by 1.00 p.m. on January 31, 2013**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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

