



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The landlords agent withdrew their claim for money owed or compensation for damage or loss.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on January 08, 2013. Mail receipt numbers were provided by the landlord's agent in evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent 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 fixed term tenancy started on July 01, 2012 and is due to end on June 30, 2013. Rent for this unit is \$700.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$350.00 on June 22, 2012 and although the tenant was required to pay a pet deposit of \$350.00 the cheque the tenant gave the landlords agent was returned to the landlord's agent as there were insufficient funds available to honour the cheque. This cheque was returned on January, 02, 2013.

The landlord's agent testifies that the tenant failed to pay the rent for December, 2012 leaving an unpaid balance of \$700.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on December 12, 2012. This was sent to the tenant by registered mail and was deemed to have been served five days after posting. This Notice states that the tenant owed rent of \$700.00 which was due on December 01, 2012. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on an undetermined date. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has failed to pay rent for January 2013 of \$700.00. The total amount of outstanding rent is now \$1,400.00.

The landlord seeks an Order to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord requests an Order of Possession to take effect as soon as possible.

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

Analysis

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

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.*

I find that the tenant has failed to pay rent for December, 2012 and January, 2013 and the landlord is entitled to recover these rent arrears. Consequently, the landlord is entitled to a monetary award to the sum of **\$1,400.00**.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$350.00** 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 pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$1,400.00
Less Security Deposit	(-\$350.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$1,100.00

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 10 days after the notice was deemed to have been served to the tenant on December 27, 2012 as the landlord omitted to fill in the 10 day Notice with an effective date. I grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,100.00**. 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 **Two days (2) after service upon the tenant**. 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 30, 2013

Residential Tenancy Branch

