



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crosby Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on January 24, 2013, the tenant did not attend. The landlord provided evidence of having served the tenant on that date and in that manner, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for ten minutes and the only participant who joined the conference call hearing was the landlord's agent.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on April 1, 2012 and expires on March 31, 2013. Rent in the amount of \$1,400.00 per month is payable in advance on the 1st day of each month. On February 23, 2012 the landlord collected a security deposit from the tenant in the amount of \$700.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement was provided as evidence.

The landlord's agent further testified that the tenant paid rent by way of a pre-authorized payment directly from the tenant's bank account to the landlord on the 1st day of each month. The payment for January, 2013, however, was returned by the tenant's financial institution for insufficient funds. The landlord's agent spoke to the tenant, and advised that a strata fine in the amount of \$100.00 was also payable, as well as a \$25.00 service fee and \$25.00 N.S.F. fee, which are provided for in the tenancy agreement. The tenant had responded that the tenant was no longer employed, and the tenant's friend paid the landlord the outstanding rent, service fee, N.S.F. fee and strata fine, totalling \$1,550.00 on December 24, 2012. On January 1, 2013 the tenant's pre-authorized payment was again returned by the financial institution for insufficient funds.

The landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 7, 2013 by sending it to the tenant by regular mail. A copy of the notice was provided for this hearing, and it is dated January 7, 2013 and states that the tenant failed to pay rent in the amount of \$1,425.00 that was due on January 1, 2013 and contains an expected date of vacancy of January 17, 2013.

The landlord's agent also testified that the tenant was served with a notice to inspect the rental unit, and the landlord's agent arrived at the rental unit but no one was home. The landlord's agent noticed clothing and food in the rental unit, but is not aware of whether or not the tenant intends to return. The landlord's agent has attempted to reach the tenant by telephone, but has received no response.

The landlord claims an Order of Possession as well as a monetary order in the amount of \$2,825.00, being \$1,400.00 for January's rent, \$1,400.00 for February's rent, and \$25.00 service fee for the returned payment for January, 2013.

Analysis

The *Residential Tenancy Act* states that a landlord may serve a tenant with a notice to end tenancy for unpaid rent or utilities on any day after the date rent is payable under the tenancy agreement. The tenant has 5 days from the date of service, or deemed

service, to pay the rent in full or dispute the notice. If the tenant pays the rent in full, the notice is of no effect. If the tenant does not pay the rent in full or dispute the notice within that 5 day period, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The *Act* also states that documents served by regular mail are deemed to have been served 5 days after mailing. In this case, I find that the tenant is deemed to have been served with the notice to end tenancy on January 12, 2013, being 5 days after it was mailed. The tenant then had 5 days from then, or until January 17, 2013 to pay the rent in full or dispute the notice. The effective date of vacancy cannot be any earlier than 10 days after the tenant receives the notice, and the *Act* states that incorrect effective dates contained in a notice to end tenancy are automatically corrected to the nearest date that complies with the *Act*. In this case, I find that the effective date of the notice is January 22, 2013. The tenant did not pay the outstanding rent and did not dispute the notice, and therefore I find that the tenant is conclusively presumed to have accepted that the tenancy ended on January 22, 2013. Therefore, the landlord is entitled to an Order of Possession.

With respect to the monetary order, I find that the tenant is in arrears of rent the sum of \$1,400.00 for the month of January, 2013. I further find that the landlord is entitled to a late payment fee of \$25.00. I also find that the tenant did not move out of the rental unit, and the landlord is entitled to rent for the month of February, 2013 in the amount of \$1,400.00.

I also find that the landlord is entitled to keep the security deposit of \$700.00 in partial satisfaction of the claim.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

In summary, I find that the landlord is entitled to an Order of Possession on 2 days notice to the tenant. I further order the landlord to keep the \$700.00 security deposit, and I grant the landlord a monetary order in the amount of \$2,175.00:

DATE	DESCRIPTION	AMOUNT	BALANCE
January, 2013	Rent	\$1,400.00	\$1,400.00
January, 2013	Service Fee	\$25.00	\$1,425.00
February, 2013	Rent	\$1,400.00	\$2,825.00

February, 2013	Filing Fee	\$50.00	\$2,875.00
February, 2013	Less Security Deposit	- \$700.00	\$2,175.00

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the \$700.00 security deposit, and I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,175.00.

This order is final and binding on the parties and may be enforced.

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: February 18, 2013

Residential Tenancy Branch

