



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authorization to retain the security deposit. The landlord provided registered mail receipts as proof the hearing documents and additional evidence were sent to the tenant via registered mail on January 25, 2013 and February 14, 2013 at the rental unit. The landlord confirmed the tenant continues to occupy the rental unit. I was satisfied the hearing documents have been sufficiently served upon the tenant and I proceeded to hear from the landlord without the tenant present.

As the tenant continues to occupy the rental unit the landlord requested his monetary claim be amended to include loss of rent for the month of February 2013. Since the tenant has obtained the benefit of occupying the rental unit for another month and I find the landlord's request non-prejudicial and I amended the landlord's application accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to monetary compensation for unpaid rent and loss of rent for the months of January and February 2013?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced November 15, 2012 and the tenant paid a \$300.00 security deposit. The tenant is required to pay rent of \$600.00 on the 1st day of every month for a fixed term set to expire May 31, 2013. The tenant's rent cheque for January 2013 was returned and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door on January 9, 2013. The Notice indicates \$600.00 in

rent was outstanding as of January 1, 2013 and has a stated effective date of January 17, 2013. The tenant presented the landlord with a cheque dated January 18, 2013 in the amount of \$650.00 for rent and late fees. The cheque was written on a closed account and was non-negotiable according to the financial institution. The landlord filed this application January 24, 2013 seeking to end the tenancy.

The landlord testified that the tenant gave another cheque to the landlord for February 2013 but it was also written on a closed bank account.

The landlord seeks to recover unpaid and/or loss of rent for the months of January 2013 and February 2013 in the amount of \$600.00 each. The landlord did not request late fees or NSF fees although such a provision exists in the tenancy agreement.

As documentary evidence, the landlord provided copies of: the tenancy agreement, the 10 Day Notice, Proof of Service of the 10 Day notice, a copy of the non-negotiable cheque dated January 18, 2013, and registered mail receipts.

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.

I accept the evidence before me that the tenant was served with a 10 Day Notice as declared by the landlord. Since it was posted on the door it is deemed to be received three days later. Therefore, the effective date automatically changes to read January 22, 2013 under section 53 of the Act.

Based upon the undisputed evidence, I am satisfied the tenant provided the landlord with a non-negotiable cheque dated January 18, 2013 and I find that the non-negotiable instrument does not constitute payment within 5 days of receiving the Notice. Therefore, I find the Notice was not nullified.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on the effective date of January 22, 2013 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

I find the landlord entitled to recover unpaid rent for the month of January 2013 and I award the landlord loss of rent for the month of February 2013 as the tenant continues to occupy the rental unit.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

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

January 2013 unpaid rent	\$ 600.00
February 2013 loss of rent	600.00
Filing fee	50.00
Less: security deposit	<u>(300.00)</u>
Monetary Order	\$ 950.00

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

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$950.00 to serve upon the tenant and enforce as necessary.

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 20, 2013

Residential Tenancy Branch