



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for Order of Possession and Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as proof the hearing documents were sent to the tenant on January 15, 2013. The landlord testified that registered mail notice cards were left by Canada Post on the landlord's door so he, along with a witness, attached the notice cards to the tenant's door on January 18, 2013 and January 28, 2013. The registered mail notice cards were removed from the tenant's door shortly thereafter but the registered mail remains unclaimed. I found the tenant to be sufficiently served and I proceeded to hear from the landlord without the tenant present.

The landlord requested authorization to retain the security deposit in partial satisfaction of the unpaid rent. I found this request non-prejudicial to the tenant as it reduces the Monetary Order and I amended the 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 a Monetary Order for unpaid rent and/or loss of rent?
3. Is the landlord authorized to retain the security deposit in partial satisfaction of unpaid rent?

Background and Evidence

The landlord and tenant executed a written tenancy agreement dated December 1, 2012; however, prior to this agreement the tenant and another tenant resided in the rental unit under a former tenancy agreement. The tenant's share of the security deposit received under the former tenancy agreement (\$200.00) was carried forward to the current tenancy.

The written tenancy agreement dated December 1, 2012 requires the tenant to pay rent of \$800.00 on the 1st day of every month and the tenant was permitted up to have a roommate with the landlord's consent.

The landlord had been receiving rent of \$400.00 on behalf of the tenant directly from the Ministry and the tenant was responsible for paying the landlord the remainder of \$400.00. The tenant had a roommate in December 2012 and gave the landlord \$300.00 of the money received from the roommate for total payments of \$700.00 for the month of December 2012. For the month of January 2013 the landlord only received the \$400.00 direct payment from the Ministry.

The landlord personally served a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) to the tenant on January 9, 2013. The Notice indicates that the tenant owed a total of \$500.00 in rent as of January 1, 2013, including the \$100.00 owed for December 2012. After serving the Notice the tenant did not pay the outstanding rent or file to dispute the Notice. No amount has been received for February 2013 and the tenant continues to occupy the rental unit.

The landlord provided a copy of the tenancy agreement; the 10 Day Notice; and, registered mail receipt, as documentary evidence for this proceeding.

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 undisputed evidence that the tenant was served with a 10 Day Notice on January 9, 2013 as submitted by the landlord. Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on January 19, 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.

Based upon evidence before me, I find the landlord entitled to recover unpaid rent in the amount of \$500.00 for the months of December 2012 and January 2013, as indicated on the 10 Day Notice. I also award the landlord loss of rent for the month of February 2013 since the tenant continues to occupy the rental unit.

I authorize the landlord to retain the tenant's \$200.00 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:

Unpaid rent – December 2012 and January 2013	\$ 500.00
February 2013 loss of rent	800.00
Filing fee	50.00
Less: security deposit	<u>(200.00)</u>
Monetary Order	\$1,150.00

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 has been provided a Monetary Order for the balance of \$1,150.00 to serve upon the tenant.

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 07, 2013

Residential Tenancy Branch

