



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession and Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord requested the application be amended to include loss of rent for February 2013 since the tenant has continued to occupy the rental unit. I found this request for amendment non-prejudicial as the tenant was present during the hearing and confirmed he has occupied the rental unit in February 2013. The landlord also requested the application be amended to authorize the landlord to retain the security deposit in partial satisfaction of the unpaid rent. As this request would reduce the Monetary Order I found the request non-prejudicial to the tenant. I have 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 loss of rent?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenant took possession of the rental unit in September 2011 and paid a security deposit of \$362.50. The tenant is required to pay rent of \$725.00 on the 1st day of every month. The tenant failed to pay rent for January 2013 when due and on January 10, 2013 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door. The Notice indicates \$725.00 was outstanding as of January 1, 2013. The tenant did not pay the outstanding rent or file to dispute the Notice within five days of receiving it. The tenant has continued to reside in the rental unit and the landlord has not collected any monies from the tenant for the month of February 2013.

The tenant did not refute any of the relevant evidence presented by the landlord. Rather, the tenant proposed a payment plan to catch up on the rental arrears and continue with the tenancy. The payment plan proposed during the hearing was not acceptable to the landlord. The landlord requested an Order of Possession effective February 25, 2013.

Documentary evidence provided by the landlord included the following: the tenancy agreement; the 10 Day Notice; Proof of Service of the 10 Day Notice; and the tenant's ledger.

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.

Upon review of the documentation presented to me, I accept that the tenant was served with a valid 10 Day Notice and since he did not pay the outstanding rent or dispute the Notice I find the tenancy ended on the effective date. Accordingly, the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective February 25, 2013 as requested.

Based upon the undisputed evidence before me, I find the landlord entitled to recover unpaid rent and loss of rent from the tenant for the months of January 2013 and February 2013 in the amount of \$1,450.00. I also award the landlord the \$50.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord

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

January 2013 unpaid rent	\$ 725.00
February 2013 loss of rent	725.00
Filing fee	<u>50.00</u>
Sub-total	\$1,500.00
Less: security deposit	<u>(362.50)</u>
Monetary Order	\$1,137.50

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 February 25, 2013 to serve upon the tenant. The landlord has been awarded a total of \$1,500.00 which is recoverable by way of the security deposit of \$362.50 and a Monetary Order for the balance of \$1,137.50.

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 13, 2013

Residential Tenancy Branch

