



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
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 loss of rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt and tracking number as proof the hearing documents were sent to the tenant at the rental unit on January 30, 2013. The landlord's agent confirmed the hearing documents were successfully delivered and that tenant still occupies the rental unit. I was satisfied the tenant has been served with the hearing documents and I proceeded to hear from the landlord without the tenant present.

Issue(s) to be Decided

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

Background and Evidence

The tenancy commenced September 20, 2012 and the tenant is required to pay rent of \$709.00 on the 1st day of every month. A security deposit of \$341.00 was transferred from a previous tenancy agreement between the parties.

The landlord testified that \$110.00 of the monthly rent payment had been coming from a third party organization on behalf of the tenant but the payments stopped. As a result, the tenant's rent payments were short \$110.00 for the months of October, November and December 2012. The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door on December 2, 2012. The Notice indicates the tenant owed \$327.00 (after deducting a \$3.00 credit) as of December 1, 2012. The tenant did not pay the outstanding rent and did not file to dispute the Notice. The tenant

did not vacate the rental unit pursuant to the 10 Day Notice and continues to occupy the unit.

The landlord stated that the tenant has agreed to vacate the unit by February 26, 2013; however, the landlord seeks an Order of Possession in the event that does not happen.

In filing the Application for Dispute Resolution the landlord requested unpaid rent of \$327.00 based upon the 10 day Notice, plus, loss of rent in the amount of \$709.00 for January 2013 and \$709.00 for February 2013. During the hearing, the landlord's agent amended the claim to reflect that \$560.00 payments were received from the Ministry for both January 2013 and February 2013.

Documentary evidence provided by the landlord included copies of: the tenancy agreement; the 10 Day Notice; and, registered mail receipt.

Analysis

A tenant is required to pay rent when it is due in accordance with the terms of their tenancy agreement. Upon review of the tenancy agreement, I find the tenant was required to pay the landlord \$719.00 on or before the 1st day of every month. The tenant's source of funds is a matter between him and the party providing the funds.

Where a tenant fails to pay rent the landlord may serve the tenant with a 10 Day Notice. 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 before me that the landlord posted a 10 Day Notice on the tenant's door on December 2, 2012. Where a Notice is posted on a door it is deemed to be received three days later. Accordingly, the effective date is automatically changed to read December 15, 2012.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on December 15, 2012 and the landlord is entitled to regain possession of the rental unit. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent of \$327.00 as indicated on the 10 Day Notice. I also award the landlord loss of rent for the months of January and February 2013, after taking into account the partial payments received from the Ministry, since the tenant has continued 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:

Unpaid rent – per 10 Day Notice	\$ 327.00
Loss of rent – January 2013 (\$709 - \$560)	149.00
Loss of Rent – February 2013 (\$709 - \$560)	149.00
Filing fee	50.00
Less: security deposit	<u>(341.00)</u>
Monetary Order	\$ 334.00

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 \$334.00 to serve 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 21, 2013

Residential Tenancy Branch

