



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WIDSTEN PROPERTY MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security and or pet deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted documentary evidence which indicates the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on January 30, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act; therefore, I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the 10 Day Notice to end tenancy for unpaid rent issued January 17, 2013; a letter issued January 17, 2013 to the Tenant advising of new management; and Canada Post receipts.

The Landlord stated that his company entered into an agreement with the owner effective January 17, 2013 to manage this building. They received an e-mail from the owner's accountant on January 14, 2013 which indicated the Tenant had rent owing for

December 2012 and January 2013. As a result, he personally served the Tenant a 10 Day Notice to end tenancy on January 17, 2013, at 2:30 p.m. in the presence of a witness. The 10 Day Notice indicated the Tenant owed \$870.00 as of January 1, 2013.

The Landlord advised that there were no written tenancy agreements and all they were provided with was a rent roll that indicated the Tenant's rent was \$650.00 per month. He had a conversation with the Tenant who had indicated he had paid a security deposit of \$325.00 however no receipts were issued. He said the Tenant indicated to him that he received the hearing documents and then told the Landlord that he did not have any money to pay his rent. The Tenant continues to occupy the rental unit and has not paid the past due amount or the February 1, 2013 rent. The Landlord advised that he is seeking an Order of Possession for as soon as possible and a Monetary Order for December, January and February 2013 rent.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on January 17, 2013, and the effective date of the Notice is **January 27, 2013**, in accordance with section 90 of the Act. The Tenant did not pay the rent and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$870.00 which consisted of \$220.00 that was due on December 1, 2012 and \$650.00 that was due January 1, 2013. The Tenant failed to pay rent in accordance with his tenancy which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$870.00**.

As noted above this tenancy ended **January 27, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for February 2013, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for February 2013, in the amount of **\$650.00**.

The Landlord has been successful with their application; therefore, I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent (Dec 2013 & Jan 2013)	\$ 870.00
Use & Occupancy & Loss of Feb 2013 rent	650.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,570.00
LESS: Security Deposit \$325.00 + Interest 0.00	<u>- 325.00</u>
Offset amount due to the Landlord	<u>\$ 1,245.00</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$1,245.00**. This Order is legally binding and must be served 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 25, 2013

Residential Tenancy Branch

