



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 an Order of Possession and a Monetary Order for unpaid and/or 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, including tracking number, as proof the hearing documents were sent to the tenant at the rental unit via registered mail on February 4, 2013. I was satisfied the tenant has been sufficiently served with notification of this proceeding and I continued to hear from the landlord's agent in the absence of the tenant.

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 and/or loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy commenced November 1, 2012 and the tenant paid a \$575.00 security deposit. The tenant is required to pay rent of \$1,050.00 on the 1st day of every month for a fixed term of one year.

The tenant did not pay rent of December 2012 or January 2013 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on January 3, 2013. The Notice was sent to the tenant via registered mail on January 4, 2013 and indicates the tenant owed rent of \$2,100.00 as of January 1, 2013. The Notice has a stated effective date of January 13, 2013.

In filing this application the landlord requested an Order of Possession and a Monetary Order for three months of rent for December 2012 through February 2013.

The landlord's agent confirmed that the tenant has not given up possession of the rental unit but that the landlord received a deposit of \$900.00 on February 12, 2013; thereby, reducing the landlord's monetary claim.

Documentary evidence provided by the landlord for this proceeding included copies of: the tenancy agreement; the 10 Day Notice; and, registered mail receipts dated January 4, 2013 and February 4, 2013.

Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy.

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 landlord sent a 10 Day Notice to the tenancy via registered mail sent January 4, 2013. As the 10 Day Notice was mailed to the tenant it is deemed to be received five days later. Accordingly, the effective date of the Notice automatically changes to comply with the Act and reads January 19, 2013 pursuant to sections 47, 53 and 90 of the Act

Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving 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 the evidence before me, I find the landlord entitled to recover unpaid rent for December 2012 and January 2013 plus loss of rent for the month of February 2013. Taking into account the partial payment of \$900.00 I find the landlord is still owed \$2,250.00 in rent [$\$1,050.00 + \$1,050.00 + \$1,050.00 - \900.00].

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:

Rent: December 2012 through February 2013	\$ 2,250.00
Filing fee	50.00
Less: security deposit	<u>(575.00)</u>
Monetary Order	\$ 1,725.00

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 \$1,725.00 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 27, 2013

Residential Tenancy Branch

