



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 convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A monetary Order for compensation – Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on May 1, 2011. Rent of \$1,460.00 is payable in advance on the first day of each month. The tenancy agreement provides for a late fee of \$25.00 where rent is received after the 5th day of the month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$707.50. The Tenant paid January 2013 rent after the 5th day and failed to pay February 2013 rent.

On February 8, 2013 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door. The Tenant paid \$800.00 on February 14, \$710.00 on February 26 and \$810.00 on March 11, 2013 leaving arrears of \$600.00 to the end of March 2013. The Landlord issued receipts for each of these payments indicating that the rent was taken for use and occupancy only. The Tenant has not disputed the Notice, has not paid the remaining arrears and has not moved out of the unit. The Landlord claims these arrears and late fees for January, February and March 2013.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not filed an application to dispute the notice and has not paid the outstanding rent. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for **\$675.00** in unpaid rent and late fees. The Landlord is entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$725.00**. Setting the security deposit of **\$707.50** plus zero interest off the entitlement leaves the amount of **\$17.50** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession effective 1:00 p.m. on March 31, 2013 to the Landlord.

I order that the Landlord retain the **deposit** and interest of \$707.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$17.50**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 21, 2013

Residential Tenancy Branch