



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenant applied to cancel a Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession and Monetary order for unpaid rent; and, authorization to retain the security deposit. 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.

Issue(s) to be Decided

1. Is there a basis under the Act to cancel the 10 Day Notice to End Tenancy?
2. Is the landlord entitled to an Order of Possession for unpaid rent?
3. Is the landlord entitled to a Monetary Order for unpaid rent?
4. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced September 15, 2012 and the tenant paid a security deposit of \$250.00. The tenant was required to pay rent of \$500.00 on the 15th day of every month. The tenant failed to pay \$80.00 of the rent owed for December 2012. The tenant did not pay rent when due on February 15, 2013. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) by posting it on the door of the rental unit on February 18, 2013. The tenant received the Notice on February 20, 2013 and filed to dispute it within five days.

The landlord submitted that he did not receive the tenant's Application for Dispute Resolution but did acknowledge that the tenant had communicated to him, via text message, that it was posted to the landlord's door. I read the tenant's basis for his Application for Dispute Resolution to the landlord which was that the tenant needed

more time to pay the outstanding rent. I did not explore this position further as an inability to pay rent is not a basis to cancel a 10 Day Notice.

I heard undisputed evidence that the landlord changed the locks to the rental unit on March 2, 2013 and after the police were called the landlord provided the tenant with a new key that same day. The landlord was informed and now understands that changing the locks to the rental unit is illegal unless done in a manner that complies with the Act. The landlord indicated he will comply with the Act with respect to entering the rental unit in the future.

The parties agreed that the tenant would be permitted occupancy of the unit until March 31, 2013 with the landlord being compensated for the days up to and including March 31, 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.

I accept the evidence before me that the tenant received a valid 10 Day Notice on February 20, 2013. In this case, the tenant failed to dispute the Notice within five days; however, an inability to pay the outstanding rent is not a basis to cancel a Notice and I dismiss the tenant's application. Therefore, I find the landlord is entitled to regain possession of the rental unit and I grant the landlord's request for an Order of Possession.

Based upon the agreement reached between the parties during the hearing I provide the landlord with an Order of Possession to serve upon the tenant with an effective of March 31, 2013.

Based upon the undisputed evidence before me, I find the landlord entitled to recover unpaid rent for December 2012 and February 2013 in the amount claimed of \$580.00. I further award the landlord \$250.00 based upon the parties' agreement that the tenant may occupy the unit until March 31, 2013.

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 findings and awards, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: December 15, 2012	\$ 80.00
Unpaid Rent: February 15, 2013	500.00
Use and occupancy: March 15 – 31, 2013	250.00
Filing fee	50.00
Less: security deposit	<u>(250.00)</u>
Monetary Order	\$ 630.00

The landlord must serve the Monetary Order upon the tenant and may be enforced in Provincial Court (Small Claims) as necessary.

Conclusion

The tenant's application has been dismissed. The landlord is provided an Order of Possession effective March 31, 2013. The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$630.00.

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 20, 2013

Residential Tenancy Branch

