



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Preliminary Issues

Upon review of the details of dispute listed on the Landlords' application for dispute resolution the Landlords confirmed that during this proceeding they wished to deal with their request for the Order of Possession and Monetary Order for unpaid rent for February and March 2013 rent. They want this claim to be offset against the security deposit and withdraw their claim for the unpaid utilities, damages, and any other losses with leave to re-apply in the future.

Based on the aforementioned I find the Landlord's intention of seeking to recover the payment for use and occupancy or loss of rent, for March 2013, a period after the tenancy ended in accordance with the 10 Day Notice, was an oversight and/or clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application. Therefore I amend their application, pursuant to section 64(3)(c) of the Act and allow the remaining items to be withdrawn with leave to reapply.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 18, 2013, by the Landlords to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent; to keep the security deposit; *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* and to recover the cost of the filing fee from the Tenant for this application.

The Landlords affirmed that the Tenant was personally served copies of the application for dispute resolution and notice of hearing documents by M.C. on February 21, 2013, at the rental unit. Based on the submissions of Landlords I find that the Tenant was sufficiently served notice of this proceeding and I continued in the Tenant's absence.

Issue(s) to be Decided

1. Should the Landlords be awarded an Order of Possession?
2. Should the Landlords be issued a Monetary Order?

Background and Evidence

The Landlords submitted documentary evidence which included, among other things, copies of: the 10 Day Notice to end tenancy for unpaid rent; their written statement; photographs; and the tenancy agreement.

The Landlord stated that the Tenant initially entered into a tenancy agreement with her boyfriend that began on September 11, 2012. After several fights the Tenant had her boyfriend move out and she signed a new month to month tenancy agreement that began on January 1, 2013. Rent is payable on the first of each month in the amount of \$1,150.00 and on September 12, 2012 they paid a security deposit of \$575.00.

When the Tenant failed to pay the February 1, 2013 rent in full the Landlord, M.C., personally served the Tenant a 10 Day Notice indicating \$450.00 was outstanding for February 1, 2013, rent. The Tenant has not made any payments to the outstanding balance owing and she has not paid rent for March 2013. The Landlords are concerned because the rental unit has several broken windows and they believe there is illegal activity being conducted in the rental unit.

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 February 5, 2013, and the effective date of the Notice is **February 15, 2013**, in accordance with 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 \$450.00 which was due February 1, 2013. The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I accept the undisputed evidence and I award the Landlord a Monetary Award for unpaid rent of **\$450.00**.

As noted above this tenancy ended **February 15, 2013**, in accordance with the 10 Day Notice. Therefore, I find the Landlord is seeking money for use and occupancy of the unit for March 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 repair the unit and find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of March 2013, in the amount of **\$1,150.00**.

The Landlords have 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 February Rent	\$ 450.00
Use & Occupancy & Loss of March Rent	1,150.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,650.00
LESS: Security Deposit \$575.00 + Interest 0.00	<u>-575.00</u>
Offset amount due to the Landlord	<u>\$1,075.00</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 **\$1,075.00**. 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: March 14, 2013

Residential Tenancy Branch

