



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 dealt with a landlord's application for an order of Possession for unpaid rent and a Monetary Order for unpaid, unpaid utilities, and loss of rent. The landlord also requested authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, and tracking information from Canada Post, as evidence the hearing documents were sent to the tenant at the rental unit on April 4, 2013 and successfully delivered on April 6, 2013. I was satisfied the tenant was served with notice of this hearing and I proceeded to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent, utilities and/or loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced January 1, 2012 and the tenant paid a security deposit of \$240.00. The tenant was required to pay rent of \$480.00 on the 1st day of every month. The tenant was also required to pay ½ of the electric and gas bills. The tenant failed to pay rent when due for March 2013 and on March 25, 2013 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice).

The Notice indicates rent of \$480.00 was outstanding as of March 1, 2013 and that utilities of \$40.00 were demanded on March 8, 2013. The Notice has a stated effective date of April 4, 2013. The landlord testified that on April 5, 2013 the tenant paid the landlord a total of \$520.00 for the outstanding rent and utilities. The landlord testified

that upon receiving the funds on April 5, 2013 the landlord informed the tenant that he was still required to vacate the rental unit. The tenant has remained in the rental unit and has not paid any monies for the month of April 2013.

The landlord requested the Application be amended to include loss of rent for May 2013, damage to the rental unit or property, and utilities incurred since March 2013. I declined to consider the landlord's request to amend the Application as I found claims for May 2013 rent and damage are anticipatory and pre-mature as of this date. Further, the landlord did not provide supporting evidence or put the tenant on notice that he was seeking utilities incurred since March 2013. The landlord was informed that he remains at liberty to file a future Application against the tenant in order to recover such losses from the tenant.

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 served the tenant with a 10 Day Notice via personal delivery on March 25, 2013 and since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice the tenancy ended on April 4, 2013. Based upon the landlord's undisputed testimony, I am satisfied the landlord did not re-instate the tenancy after accepting payment for the outstanding rent and utilities on April 5, 2013. Therefore, I grant the landlord's request for an Order of Possession. The Order of Possession shall be effective two (2) days after service upon the tenant.

As the tenant has since satisfied the unpaid rent and utilities for March 2013 but did not pay rent for April 2013 and did not vacate the rental unit when required to do so; I grant the landlord's request to recover unpaid and/or loss of rent for the month of April 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, the landlord is provided a Monetary Order for the balance of \$290.00, calculated as: \$480.00 April 2013 rent + \$50.00 filing fee – 240.00 security deposit.

To enforce the Monetary Order the landlord must serve it upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenancy has ended and the landlord is 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 in partial satisfaction of the unpaid rent for April 2013 and is provided a Monetary Order for the balance of \$290.00

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: April 30, 2013

Residential Tenancy Branch

