



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENMARK INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC MNR MNSD FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing in the details of dispute that they were seeking "*Unpaid rent*" on their original application.

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 a period after the tenancy ended in accordance with the 1 Month 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

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 7, 2013, by the Landlord to obtain an Order of Possession for Cause and a Monetary Order for: unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The Landlord affirmed that each Tenant was personally served copies of the application for dispute resolution and notice of hearing documents on March 10, 2013 at approximately 4:21 p.m., in the presence of a witness. Based on the submissions of the Landlord I find that each Tenant was sufficiently served notice of this proceeding and I continued in the Tenants absence.

Issue(s) to be Decided

1. Should the Landlord be awarded an Order of Possession?
2. Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: proof of service documents; the 1 Month Notice to end tenancy dated January 31, 2013; the tenancy agreement; a list of vehicle license plate numbers; and breach letters issued to the Tenant.

The Landlord confirmed the Tenants entered into a fixed term tenancy that began on November 1, 2012 and is set to end on October 31, 2013. Rent is payable on the first of each month in the amount of \$650.00 and on November 1, 2012, the Tenants paid \$325.00 as the security deposit.

The Landlord advised that she served the Tenants the 1 Month Notice to end tenancy on January 31, 2013 in the presence of a police officer. The reasons for issuing the Notice were provided in her written submission. The Tenants have not filed to dispute the notice and they continue to occupy the rental unit. The Tenants have not paid anything towards rent or for occupying the rental unit for March or April 2013 even though they continue to live in the unit.

Analysis

When a tenant receives a 1 Month Notice to end tenancy for cause they have ten (10) days to make application to dispute the Notice or the tenancy ends.

In this case the Tenants received the 1 Month Notice in person on January 31, 2013, and the effective date of the Notice is **February 28, 2013**, in accordance with section 90 of the Act. The Tenants did not dispute the Notice, therefore, the Tenants are 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 47(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

I accept the undisputed evidence that the Tenants have failed to pay make payments to the Landlord for March or April 2013 rent. As noted above this tenancy ended **February 28, 2013**, in accordance with the 1 Month Notice. Therefore I find the Landlord is seeking money for use and occupancy for March 2013 and April 2013, not rent.

The Tenants are still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and then they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and

occupancy and any loss of rent for the entire months of March and April 2013, in the amount of **\$1,300.00** (2 x \$650.00).

The Landlord has 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 Tenants' security deposit plus interest as follows:

Use & Occupancy & Loss of Rent March & April 2013	\$1,300.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,350.00
LESS: Security Deposit \$325.00 + Interest 0.00	<u>- 325.00</u>
Offset amount due to the Landlord	<u>\$1,025.00</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 Tenants.

The Landlord has been awarded a Monetary Order in the amount of **\$1,025.00**. This Order is legally binding and must be served upon the Tenants.

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 08, 2013

Residential Tenancy Branch

