



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KELLER WILLIAMS VALLEY REALTY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession and a Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord provided a copy of a registered mail receipt, including tracking number, as proof the hearing documents were mailed to the tenant at the rental unit on March 19, 2013. A search of the tracking number indicated the recipient refused to accept the registered mail.

Under section 90 of the Act a person is deemed to be served five days after documents are mailed to them so that a person cannot avoid service by refusing to accept registered mail.

In light of the above, I found the landlord sufficiently served the tenant with the hearing documents and I continued to hear from the landlord without the tenant present.

The landlord requested the application be amended to include a request to retain the security deposit in partial satisfaction of the unpaid rent. I found this request non-prejudicial to the tenant as it reduces any Monetary Order provided to the landlord and I have amended the application to include this request.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

Under a verbal agreement, the tenancy commenced in August 2011 for a monthly rent of \$800.00 payable on the 1st of every month and the tenant was required to pay for all utilities. The tenant paid a security deposit of \$400.00.

I heard that the parties mutually agreed to enter into a subsequent verbal tenancy agreement that required the tenant to pay a monthly rent of \$950.00 inclusive of utilities starting January 2012.

The tenant failed to make any rent payments for April through August 2012 resulting in the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent on August 17, 2012. The landlord did not pursue enforcement of that 10 Day Notice and the tenant continued to reside in the rental unit.

On February 6, 2013 the landlord issued another 10 Day Notice to End Tenancy for Unpaid Rent indicating the tenant owed \$5,850.00 in rent as of February 1, 2013 and an effective vacancy date of February 19, 2013. The Notice was posted on the tenant's door by the property manager in the presence of a witness.

The landlord explained that the amount of unpaid rent appearing on the February 6, 2013 Notice to End Tenancy was the sum of the follow amounts:

Rent: April 2012 thru February 2013 (\$950.00 x 11 months)	\$10,450.00
Less: payments received –	
September 2012	(1,200.00)
November 2012	(2,400.00)
January 2013	<u>(1,000.00)</u>
Rent owed as of February 1, 2013	\$ 5,850.00

In filing this Application for Dispute Resolution the landlord indicated the tenant had made partial payment of \$1,000.00 after the Notice was posted February 6, 2013; however, during the hearing the landlord acknowledged that two payments had been received: \$200.00 on February 15, 2013 and \$1,000.00 on March 15, 2013.

Documentary evidence provided for this proceeding included copies of: the Notice to End Tenancy dated August 17, 2012 along with the registered mail receipt dated August 17, 2012; the Notice to End Tenancy dated February 6, 2013 along with a signed Proof of Service; and, the registered mail receipt for service of the hearing documents.

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.

Based upon the undisputed evidence before me, I accept that the landlord posted a 10 Day Notice to End Tenancy on the tenant's door on February 6, 2013. Since the tenant did not pay the full amount of the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on February 19, 2013 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for the amount appearing on the 10 Day Notice less the two partial payments received since the Notice was posted which I calculate to be \$4,650.00 [\$5,850.00 – \$200.00 – \$1,000.00]. The landlord is at liberty to file another Application for Dispute Resolution seeking recovery of losses incurred after February 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 calculated as follows:

Unpaid Rent: as per the February 6, 2013 Notice	\$ 5,850.00
Less: partial payments received	(1,200.00)
Filing fee	50.00
Less: security deposit	<u>(400.00)</u>
Monetary Order	\$ 4,300.00

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

Conclusion

The landlord has been 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 and has been provided a Monetary Order for the balance of \$4,300.00 to amounts owed up to and including the month of February 2013. The landlord is at liberty to file another application for losses incurred after February 2013.

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 16, 2013

Residential Tenancy Branch

