



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPE, OPC, OPB, MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession based upon unpaid rent, cause, end of employment, and breach of an agreement with the landlord; a Monetary Order for unpaid rent and utilities; and authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt as proof of sending the hearing documents to the tenant at the rental unit on March 22, 2013. The landlord confirmed that pursuant to an inspection of the rental unit on April 3, 2013 the tenant was still occupying the rental unit. I was satisfied the landlord served the tenant with the hearing documents in a manner that complied with the Act 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 recover unpaid rent and utilities from the tenant?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

On June 1, 2012 the tenant and a co-tenant began a tenancy for unit #102 at the residential property. The rent for that unit was \$900.00 per month; however, pursuant to an Addendum to the tenancy agreement the tenant(s) provided management duties for the landlord in lieu of paying rent. The monthly rent did not include electricity.

In February 2013 the landlord terminated the management agreement and permitted the male tenant and his child to move into unit #203 as it was less expensive at \$775.00 per month. The tenant was required to pay rent of \$775.00 starting March 1, 2013 under their verbal agreement. There was no request for the tenant to pay a security

deposit for unit #203. The tenant did not pay rent for March 2013 and the landlord issued the following Notices to End Tenancy:

1. 1 Month Notice to End Tenancy for End of Employment dated and served upon the tenant in person on March 1, 2013.
2. 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated and posted on the tenant's door on March 5, 2013 in the presence of a witness, indicating rent of \$775.00 was outstanding as of March 1, 2013 and failure to pay utilities of \$453.89 that were demanded in writing as of March 5, 2013.

The landlord also issued a letter to the tenant dated March 5, 2013 demanding payment of the rent for March 2013 and utilities of \$359.40 for unit #102 and \$94.49 for unit #203.

The landlord testified that the tenant has neither paid the rent or utilities owed and has not returned possession of the unit to the landlord.

I confirmed with the landlord the monetary claim filed with this application included amounts related to unit #102. I informed the landlord that tenancy agreements for different units cannot be combined in a single application. Therefore, I excluded the landlord's request for utilities related to unit #102 and the landlord's request to retain the security deposit reflected in the tenancy agreement for unit #102. The landlord remains at liberty to file a separate application with respect to damages or loss related to unit #102.

As the tenant has continued to occupy the rental unit in April 2013 I agreed to consider the landlord's request for loss of rent for the month of April 2013.

Documentary evidence provided for this hearing included copies of: the tenancy agreement for unit #102 and the addendum; the 1 Month Notice; the 10 Day Notice; and, the letter dated March 5, 2013 demanding payment of rent and utilities; a written summary of events; and, the registered mail receipt, including tracking number.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, including verbal tenancy agreements. If a tenant does not pay the rent due 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 posted a 10 Day Notice to the tenancy on the door of the rental unit on March 5, 2013. As the 10 Day Notice was posted it is deemed to be received three days later. Accordingly, the effective date of the Notice automatically changes to comply with the Act and reads March 18, 2013 pursuant to sections 46, 53 and 90 of the Act

Since the tenant did not pay the outstanding rent or dispute the 10 Day Notice within five days of receiving the Notice I find the tenancy legally ended on March 18, 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.

As I have found the tenancy has ended due to an undisputed 10 Day Notice I find it unnecessary to consider the landlord's request for an Order of Possession based upon the 1 Month Notice to End Tenancy issued for the end of employment.

Based upon the undisputed evidence before me, I accept that the parties had a verbal agreement for the tenant to pay rent of \$775.00 for unit #203 starting March 1, 2013 and I award the landlord unpaid rent in that amount. As the tenant did not vacate the rental unit pursuant to the 10 Day Notice and has continued to occupy the rental unit into April 2013 I also award the landlord loss of rent for the month of April 2013 in the amount of \$775.00.

Based upon the undisputed evidence, I am also satisfied that the parties agreed that the tenant would be responsible for paying for electricity and that the landlord gave the tenant a written demand for payment for \$94.49 in utilities owed for unit #203. Therefore, I award this amount to 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:

Rent: March 2013 and April 2013	\$ 1,550.00
Utilities – demanded in writing March 5, 2013	94.49
Filing fee	<u>50.00</u>
Monetary Order	\$ 1,694.49

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 provided a Monetary Order in the amount of \$1,694.49 to serve and enforce as necessary.

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 18, 2013

Residential Tenancy Branch

