



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent, return of the rental incentive and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim.

The notice of hearing was served on the tenant on March 17, 2013 by registered mail. The landlord provided a tracking number. The landlord testified that he had tracked the package on line and it was delivered to the tenant. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order to recover unpaid rent, the rental incentive, the filing fee and to retain the security deposit?

Background and Evidence

The tenancy started on October 01, 2012 for a fixed term of one year. The monthly rent is \$1,089.00 which includes parking. Prior to moving in the tenant paid a deposit of \$499.00. The landlord filed a copy of the tenancy agreement. Clauses in the agreement require the tenant to pay \$25.00 for rent paid late and to return the rental incentive of \$500.00 if the tenant breaches the rental agreement.

The landlord testified that the tenant failed to pay rent for March 2013. On March 04, 2013, the landlord served the tenant with a ten day notice to end tenancy. The tenant did not dispute the notice and continued to occupy the rental unit without paying rent. At the time of the hearing the tenant owed the landlord \$1,114.00 for unpaid rent, parking and late fees for March and the same for April 2013. The landlord is also claiming the return of \$500.00 which was the incentive provided to the tenant at the start of the tenancy. The landlord is applying for an order of possession effective two days after service on the tenant.

Analysis

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent, on March 04, 2013 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing an order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord is entitled to \$2,228.00 for unpaid rent, parking and late fees. By signing the tenancy agreement the tenant also agreed to return the rental incentive as indicated in the clause. I find that the tenant breached the terms of the tenancy agreement and must therefore return the rental incentive of \$500.00. Since the landlord has proven his case, he is also entitled to the recovery of the filing fee of \$50.00.

I order that the landlord retain the security of \$499.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$2,279.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order in the amount of **\$2,279.00**.

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 10, 2013

Residential Tenancy Branch

