



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, MNR, MNDC, OLC, ERP, RP, RP, PSF

For the landlord – OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for dispute resolution. The tenant applied to cancel a Notice to End Tenancy; for a Monetary Order for the cost of emergency repairs; for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, for an Order for the landlord to comply with the *Act*, for an Order for emergency repairs for health or safety reasons; for an Order for repairs to the unit, site or property; and for an Order for the landlord to provide services or facilities required by law. The tenant had also applied to recover the filing fee although no filing fee was paid by the tenant. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The hearing went ahead as scheduled however the tenant failed to dial into the conference call during call. Therefore, no hearing took place regarding the tenant's application as the tenant has failed to present the merits of their application. The tenant's application is therefore dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*. The landlord declares that the tenant was served in person with the hearing documents by the landlord on May 08, 2013.

The landlord appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that this tenancy started on March 21, 2013 for a fixed term of one year. Rent for this unit is \$1,200.00 per month and is due on the 21st of each month. The tenant paid a security deposit of \$300.00 on March 21, 2013.

The landlord testifies that the tenant failed to pay rent that was due on April 21, 2013. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on April 30, 2013. This was served in person, with a witness, to the tenant on April 30, 2013. This Notice states that the tenant owes rent of \$1,200.00. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on April 30, 2013. The tenant did not pay the outstanding rent and although the tenant has disputed the Notice on the sixth day the tenant has not appeared at the hearing today to present the merits of their application. Since The 10 day Notice was served the tenant has not paid rent that was due on May 21, 2013 to the amount of \$1,200.00. The total amount of unpaid rent is now \$2,400.00.

The landlord has applied to retain the tenant's security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

The landlord has provided a copy of the tenancy agreement, a copy of the 10 Day Notice to End Tenancy and proof of service of the Notice in documentary evidence.

The landlord testifies that there is no further monetary claim at this time for money owed or compensation for damage or loss.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently I find that the tenant has failed to pay rent due on April 21 and May 21, 2013 and the landlord is entitled to recover these rent arrears to the sum of \$2,400.00. and the landlord will receive a monetary award for this sum pursuant to s.67 of the Act.

I order the landlords pursuant to s. 38(4)(b) of the Act to keep the tenant's security deposit of **\$300.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the Act. The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$2,400.00
Less Security Deposit	(-\$300.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$2,150.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The notice is deemed to have been received by the tenant on April 30, 2013 and the effective date of the notice is amended to May 10, 2013 pursuant to section 53 of the Act. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the Act.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the Act, to have accepted that the tenancy ended on the amended effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the Act.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,150.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The tenant's application is dismissed without leave to reapply.

As the tenant did not appear at the hearing today; I Order that the tenant pay the filing fee of **\$50.00** that was previously waived to the director of the Residential Tenancy Office.

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: May 31, 2013

Residential Tenancy Branch