



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened by way of conference call in response to the landlords application 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 tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 11, 2013. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues 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

This month to month tenancy started on February 23, 2013. The parties signed an addendum to the tenancy agreement agreeing that the tenancy would end by April 10, 2013. A copy of this addendum has been provided in evidence. Rent for this unit is \$830.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$415.00 on February 23, 2013.

The landlord testifies that the tenant failed to pay the prorated rent up to April 10, 2013 on the 1st day of April. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on April 04, 2013. This was served to the tenant by registered mail on April 04, 2013. This Notice states that the tenant owes rent of \$276.67 which was due on April 01, 2013. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on April 19, 2013. The tenant did not pay the outstanding rent or dispute the Notice within five days. The landlord testifies that the tenant failed to vacate the rental unit on April 10, 2013 as agreed and continues to reside in the rental unit. The landlord testifies that no rent has been paid by the tenant for April or May, 2013. The total amount of outstanding rent is now \$1,660.00.

The landlord requests an Order to retain the tenant's security deposit in partial payment towards the rent arrears and a Monetary Order for the balance. The landlord also requests to recover the \$50.00 filing fee from the tenant. The landlord requests an Order of Possession to take effect as soon as possible.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. 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 agreed to move from the rental unit by April 10, 2013 and failed to do so. The tenant remains in possession of the rental unit and has failed to pay rent for April and May, 2013 to the sum of **\$1,660.00**. Consequently, the landlord has established a claim for the sum of **\$1,660.00**.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$415.00** in partial payment of the rent arrears.

The landlord had applied for a further Monetary Order for money owed or compensation for damage or loss however as this concerned the matter of a loss of rental income this has been dealt with under unpaid rent and no further monetary amounts have been applied for at this time.

As the landlord has been largely 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	\$1,660.00
Less Security Deposit	(-\$415.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$1,295.00

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 states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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 effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND y in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,295.00**. 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 upon 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.

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 08, 2013

Residential Tenancy Branch

