



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOARDWALK GENERAL PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, loss of rent and a late fee; and, authorization to retain the security deposit and pet deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for the amounts claimed?
3. Is the landlord authorized to retain the security deposit and/or pet deposit?

Background and Evidence

The one-year fixed term tenancy commenced November 1, 2012 and the tenants paid a security deposit of \$299.00 and a pet deposit of \$449.50. The tenants are required to pay rent of \$899.00 on the 1st day of every month. The tenants failed to pay rent for May 2013 and on May 4, 2013 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the rental unit door. The Notice indicates the tenants failed to pay rent of \$899.00 as of May 1, 2013 and has a stated effective date of May 14, 2013. The tenants did not pay the outstanding rent and continue to reside in the rental unit.

The landlord is seeking to recover unpaid rent for May 2013 and loss of rent for the month of June 2013. The landlord is also seeking a late fee of \$25.00 for the month of May 2013 based upon a term in the tenancy agreement that provides for such a charge.

Documentary evidence submitted by the landlord included copies of: the tenancy agreement; the 10 Day Notice; and, Proof of Service of the 10 Day Notice.

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.

I accept the evidence before me that the landlord served a 10 Day Notice to End Tenancy and, under section 90 of the Act, it was deemed to be received by the tenants three days later on May 7, 2013. Accordingly, the effective date of the Notice automatically changes to comply with the Act and reads May 17, 2013 pursuant to section 53 of the Act.

Since the tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on May 17, 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 tenants.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for May 2013 plus loss of rent for the month of June 2013 since the tenants are still in possession of the unit. I am also satisfied the landlord is entitled to charge a late fee of \$25.00 with respect to the month of May 2013.

I authorize the landlord to retain the tenants' security deposit and pet 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 and/or Loss of Rent: May 2013 and June 2013	\$ 1,798.00
Late fee: May 2013	25.00
Filing fee	50.00
Less: security deposit	(229.00)
Less: pet deposit	<u>(449.50)</u>
Monetary Order	\$ 1,194.50

The landlord must serve the Monetary Order upon the tenants 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 tenants. The landlord has been authorized to retain the tenants' security deposit and pet deposit and has been provided a Monetary Order for the balance of \$1,194.50 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 *Manufactured Home Park Tenancy Act*.

Dated: June 11, 2013

Residential Tenancy Branch

