



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and a Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant via registered mail at the rental unit on May 22, 2013 and the landlord provided a copy of the registered mail receipt, including tracking number, as evidence. A search of the tracking number showed that the registered mail remains unclaimed by the tenant although the landlord confirmed the tenant continues to reside at the rental unit.

When documents are mailed, section 90 of the Act deems them to be received five days later, even if the recipient refuses to accept or pick up the mail. Therefore, I found the tenant has been sufficiently served with the hearing documents in a manner that complies 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 due to unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent and/or loss of rent and late fees in the amounts claimed?

Background and Evidence

The tenancy commenced February 1, 2010 and the tenant paid a security deposit of \$325.00. The tenant is required to pay rent of \$650.00 on the 1st day of every month. The tenant failed to pay rent when due for the month of May 2013 and on May 2, 2013 the landlord sent a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) to the tenant via registered mail. The landlord provided a copy of the registered mail receipt and evidence that the 10 Day Notice was received by the tenant on May 9, 2013.

I heard that the parties had communications whereby the landlord agreed to withdraw this Application if the tenant paid the outstanding rent for May 2013 and June 2013; however, the tenant paid only \$580.00 on May 27, 2013. On June 3, 2013 the landlord issued another 10 Day Notice with respect to June's rent and sent that to the tenant via registered mail on June 5, 2013. The landlord also communicated to the tenant, in writing, that he would be continuing with the Arbitration in the absence of the tenant's payment of the outstanding rent.

In addition to an Order of Possession the landlord is seeking to recover the unpaid rent of \$70.00 for May 2013; \$650.00 for loss of rent for June 2013; and, \$30.00 for a late fee for May's rent.

The tenancy agreement contains a term that states late payments are subject to a minimum service charge of \$30.00 each.

Documentary evidence provided for this proceeding included copies of: the tenancy agreement; the 10 Day Notice issued May 2, 2013; and, registered mail receipts for service of the 10 Day Notice and the hearing documents.

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 sent a 10 Day Notice to the tenant via registered mail and the tenant received the 10 Day Notice on May 9, 2013. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy came to an end 10 days later. Based upon the evidence presented to me, I accept that the landlord was willing to reinstate the tenancy should the tenant come forward with all of the outstanding rent but that the tenant failed to do so. Therefore, I find the tenancy has not reinstated and I grant the landlord's request for an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover the balance of the unpaid rent for May 2013 in the amount of \$70.00 and since the tenant continues to occupy the rental unit I grant the landlord loss of rent for the month of June in the amount of \$650.00. I further award the landlord the filing fee of \$50.00 paid for this Application.

I make no award for late fees as I find the term providing for a late fee service charge in the minimum amount of \$30.00 to be non-compliant with the limitations provided by the Residential Tenancy Regulations.

As the landlord did not request authority to retain the security deposit it remains in trust for the tenant to be administered in accordance with the Act.

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 sum of \$770.00 for unpaid and/or loss of rent up to and including the month of June 2013 and recovery of the filing fee.

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: June 13, 2013

Residential Tenancy Branch

