



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 was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and utilities; loss of rent; and, authorization to retain the security deposit. 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 address on May 23, 2013. The landlord provided a registered mail tracking number as proof of service and testified that the registered mail was successfully delivered. I was satisfied the tenant has been sufficiently served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

The landlord requested the application be amended to withdraw her request for loss of rent for June 2013 as it has been paid and withdraw her request to retain the security deposit in order to deal with it at later date. I found these requests non-prejudicial and have amended the landlord's claim accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The tenancy commenced May 1, 2012 and the tenant is required to pay rent of \$1,900.00 on the 1st day of every month. The tenant paid only \$1,000.00 of the rent owed for May 2013. On May 15, 2013 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). The 10 Day Notice indicates that rent of \$900.00 was outstanding as of May 1, 2013 and utilities of \$234.95 were outstanding as of April 7, 2013. The 10 Day Notice has a stated effective date of May 25, 2013.

The landlord testified that the tenant did not pay the outstanding rent or utilities indicated on the 10 Day Notice. The tenant did, however, present the landlord with rent for June 2013 and the parties agreed in writing that the tenant would vacate the rental unit by July 1, 2013. Therefore, the landlord requests an Order of Possession with an effective date of July 1, 2013.

With respect to utilities, the landlord explained that the amount appearing on the 10 Day Notice represents water bills the tenant had not yet paid to the municipality. The landlord is aware that multiple municipal water bills remain outstanding and if the bills are not satisfied the landlord, as the property owner, will be required to pay them. The landlord has not yet paid any of the water bills to the municipality. Accordingly, the landlord withdrew her request to retain the security deposit by way of this Application in anticipation the parties may use the security deposit for unpaid utilities and/or damage to the rental unit, to be determined at the end of the tenancy.

In light of the above, the landlord requests a Monetary Order for the \$900.00 in rent outstanding for May 2013 plus recovery of the filing fee.

Documentary evidence provided for this hearing included copies of: the tenancy agreement; the 10 Day Notice; and, various email or text communications between the parties.

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 serve a 10 Day Notice to the tenant.

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 the tenant with a 10 Day Notice on May 15, 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 ended on the effective date of May 25, 2013.

Having heard the landlord subsequently accepted monies from the tenant with respect to use of the rental unit for the month of June 2013 I provide the landlord with an Order of Possession effective July 1, 2013 as requested.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for May 2013 in the amount of \$900.00 and I award the \$50.00 filing fee to the landlord. However, I find the landlord's claims for unpaid water bills to be pre-mature as the landlord has not yet suffered a loss with respect to the water bills and that portion of the landlord's claim is dismissed with leave to reapply.

In light of the above, the landlord is provided a Monetary Order in the sum of \$950.00. The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

The security deposit 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 July 1, 2013 as requested. The landlord has been provided a Monetary Order in the amount of \$950.00 to serve and enforce as necessary. The security deposit remains in trust, to be administered in accordance with the Act.

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 18, 2013

Residential Tenancy Branch

