



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Seto Investments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's 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. At the hearing the landlord withdrew their application for a Monetary Order for money owed or compensation for damage or loss and to recover the filing fee as this has already been paid by the tenant.

The tenant, the landlord and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy however did not serve this in the correct manner to the tenant so has not been considered. All testimony of the parties has been considered in this decision. 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 June 18, 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*.

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?

Background and Evidence

This six month fixed term tenancy started on February 01, 2013. Rent for this unit is \$880.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$440.00 on January 14, 2013.

The landlord testifies that the tenant failed to pay the rent due of \$880.00 on June 01, 2013. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on June 07, 2013. This was posted to the tenant's door on June 07, 2013. This Notice states that the tenant owes rent of \$880.00 which was due on June 01, 2013. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on June 20, 2013. The tenant did not pay the outstanding rent or dispute the Notice within five days. The tenant did however pay 960.00 on June 25, 2013 for the rent and filing fee of \$50.00 for this proceeding. The landlord testifies that they explained to the tenant that the hearing scheduled would proceed but would be withdrawn if the tenant paid rent for July on the day it was due. The landlord testifies that the tenant did not pay the rent for July on the day it was due and on July 08, 2013 the tenant asked if she could pay rent less \$100.00 and would do so if the landlords cancelled the hearing. The landlord testifies that they did not agree to this and so no rent was paid for July, 2013. The total amount of outstanding rent is now \$880.00.

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 requests an Order of Possession to take effect as soon as possible.

The tenant agrees that rent was paid late for June, 2013. The tenant testifies that she had recently been laid off work and then diagnosed with a medical condition which resulted in the tenant having to apply for disability payments. The tenant testifies that these payments did not come until June 25, 2013 and June's rent was paid on that date. The tenant testifies that she also paid the \$50.00 filing fee to the landlord's agent as he promised to withdraw the application for this hearing.

The tenant testifies that she did not pay July's rent on time but did have the money on July 08, 2013. The tenant agrees she did ask the landlord's agent if she could pay \$100.00 less that day to help get the tenant through the month. The tenant testifies that at first the landlord's agent agreed to this and then he said he would have to speak to the landlord. The tenant testifies that he then said it was not alright to do this and so the tenant did not pay the rent as the landlords said they were going to proceed with the application.

The landlord's manager (agent) testifies that the condition agreed to with the tenant was that the landlord would withdraw the application if the tenant paid July's rent on time. As the tenant did not do so and then asked for a rent reduction on July 08, 2013 that she would pay back after the hearing. The landlord would not agree to this because if the tenant did not pay the \$100.00 back the landlord would have to file a new application.

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 landlord has established that the tenant failed to pay rent for June of \$880.00. The tenant has since paid that amount but paid it outside the five day time frame. The tenant also failed to pay rent for July, 2013 of \$880.00.

Consequently, the landlord has established a monetary claim for the amount of **\$880.00** in rent for July, 2013.

The landlord has applied for \$2,250.00 but on examination of the application it appears that the landlord has added the security deposit of \$440.00 and the filing fee of \$50.00 to the application. The landlord states this was done in error and the total amount of the claim is now for \$880.00.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$440.00** in partial payment of the rent arrears.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$880.00
Less Security Deposit	(-\$440.00)
Total amount due to the landlords	\$440.00

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 in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$440.00**. 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: July 18, 2013

Residential Tenancy Branch

