



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 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.

The tenant and the landlord attended the conference call hearing, gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy. 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*, and were served in person to the tenant on July 27, 2013.

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

The parties agree that this month to month tenancy started on June 01, 2013. Rent for this unit is \$750.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$300.00 on or about June 01, 2013.

The landlord testifies that the tenant failed to pay the rent due of \$750.00 on July 01, 2013. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on July 09, 2013. This was posted to the tenant's door on July 09, 2013. The landlord has only provided the first page of this Notice in evidence however the tenant agrees that he received page one and page two of the Notice. This Notice states that the tenant owes rent of \$750.00 which was due on July 01, 2013. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on July 19, 2013. The tenant did not pay the outstanding rent or dispute the Notice within five days. The tenant did however pay \$500.00 on July 24, 2013. The landlord testifies that the tenant failed to pay rent for August, 2013 of \$750.00. The total amount of outstanding rent is now \$1,000.00.

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 is outstanding of \$1,000.00. The tenant testifies that he can make a payment of \$500.00 next Wednesday and a further \$500.00 the week after that. The tenant testifies that he will then also be in a position to pay rent for September, 2013 of \$750.00 if the landlord does not proceed with the Order of Possession.

The landlord testifies that the tenant must pay rent on time and requests that the Order of Possession is still issued. The landlord states that there is no further claim for money owed or compensation for damage or loss.

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 July and August, 2013 of \$1,000.00. Consequently, the landlord has established a monetary claim for the amount of **\$1,000.00** pursuant to s.67 of the *Act*.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$300.00** in partial payment of the rent arrears.

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

Outstanding rent	\$1,000.00
Less Security Deposit	(-\$300.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$750.00

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 monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$750.00**. 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: August 30, 2013

Residential Tenancy Branch

