



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for unpaid rent and a Monetary Order for unpaid rent; and, authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord provided registered mail receipts and tracking information to prove the hearing documents were sent to each of the tenants at the rental unit on August 17, 2013. The landlord testified that the tenants continue to reside at the rental unit. I was satisfied the landlord sufficiently served the tenants with notification of this proceeding and I continued to hear from the landlord without the tenants present.

During the hearing the landlord requested that the monetary claim be amended to include loss of rent for September 2013 since the tenants continue to occupy the rental unit and no monies have been paid for September 2013. I allowed the request for amendment as I found the request non-prejudicial to the tenants since they have continued to benefit from occupation of the rental unit.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Has the landlord established an entitlement to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced May 25, 2013 and the tenants paid a security deposit of \$425.00. The tenants are required to pay rent of \$850.00 on the 1st day of every month for a fixed term set to expire November 30, 2013. The tenants failed to pay the rent due on August 1, 2013 and on August 2, 2013 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the door of the rental unit. The Notice

indicates that \$850.00 in rent is outstanding and has stated effective date of August 12, 2013. The landlord submitted that the tenants came forward with \$350.00 leaving a balance owing of \$500.00. Although the tenants promised to pay the balance by the end of August 2013 they did not. Yet, the tenants continue to reside in the rental unit and the landlord has not received any monies for the month of September 2013.

In addition to an Order of Possession the landlord is seeking to recover unpaid and/or loss of rent for the months of August and September 2013.

In support of the landlord's application I was provided copies of: the tenancy agreement; the 10 Day Notice; a signed Proof of Service of the 10 day Notice; and, registered mail receipts and tracking information.

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 posted a 10 Day Notice to End Tenancy on the rental unit door on August 2, 2013. Accordingly, the 10 Day Notice is deemed to be received three days later under section 90 of the Act. The effective date of the Notice automatically changes to comply with the Act and reads August 15, 2013 pursuant to sections 46 and 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 August 15, 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 August 2013 in the amount of \$500.00 plus loss of rent for the month of September 2013 since the tenants continue to reside in the rental unit.

I authorize the landlord to retain the tenants' security 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 rent: August 2013	\$ 500.00
Loss of rent: September 2013	850.00
Filing fee	50.00
Less: security deposit	<u>(425.00)</u>
Monetary Order	\$ 975.00

To enforce the Monetary Order the landlord must serve it upon the tenants and may file 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 tenant's security deposit and has been provided a Monetary Order for the balance of \$975.00 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 *Residential Tenancy Act*.

Dated: September 26, 2013

Residential Tenancy Branch

