



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Telford Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords 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; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*. The building manager for the landlord testifies that the tenant was served in person with these documents on August 15, 2013 and signed to agree service took place.

The landlords agents appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issue(s) 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 month to month tenancy started on December 01, 2011. Rent for this unit is \$830.40 per month. Rent is due on the first of each month. The tenant paid a security deposit of \$400.00 on December 16, 2011.

The landlord's agent testifies that the tenant failed to pay rent for August, 2013 of \$830.40. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on August 02, 2013. This was served in person to the tenant on this date and the tenant signed a proof of service document to acknowledge receipt of the 10 Day Notice. This Notice states that the tenant owes rent of \$830.40. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on August 12, 2013. The tenant did not pay the outstanding rent or dispute the Notice within five days. However the tenant did pay \$1,350.00 on September 20, 2013 for Augusts outstanding rent and part of Septembers rent. The total amount of outstanding rent is now \$310.80.

The landlords have applied to retain the tenants' security deposit satisfaction of the rent arrears and to recover the \$50.00 filing fee from the tenant. The landlords have also applied for an Order of Possession to take effect within two days of service.

Analysis

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 am satisfied with the undisputed evidence before me that the tenant failed to pay rent for August, 2013 on the day it was due. The tenant did make a payment after the five days indicated on the Notice for August and part of September's rent and therefore I find the landlords are entitled to recover the outstanding rent arrears of **\$310.80**.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep part of the tenant's security deposit to an amount of **\$360.80** for the unpaid rent and filing fee. The balance of the security deposit of **\$39.20** must either be returned to the tenant or dealt with under s. 38(1) of the *Act*.

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenant on August 02, 2013. The Notice states that the tenant has 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 section 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's claim for unpaid rent and the filing fee. The landlord may keep **\$360.80** of the security deposit.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on 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: September 20, 2013

Residential Tenancy Branch

