



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession 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 two registered mail receipts as proof the hearing documents were sent to each tenant via registered mail at the rental unit address on August 14, 2013. The registered mail was returned to the landlord as unclaimed. The landlord's agent confirmed that the tenants continue to reside at the rental unit.

Section 90 of the Act deems documents to be received five days after mailing so that a recipient cannot avoid service by refusing to accept or pick up their mail.

Based upon the evidence presented to me, I was satisfied the landlord served the tenants with notice of this proceeding in a manner that complies with the Act and I continued to hear from the landlord's agent without the tenants present.

The landlord requested during the hearing that the landlord's monetary claim be amended to include loss of rent for September 2013 as the tenants are still in possession of the rental unit. In these circumstances, I found the request non-prejudicial as the tenants have continued to benefit from possession of the rental unit. Therefore, I amended the claim application accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to monetary compensation for unpaid and/or loss of rent?

Background and Evidence

Under a verbal agreement a tenancy commenced June 1, 2013 and the tenants are required to pay rent of \$1,250.00 on the 1st day of every month. A security deposit was not collected although the landlord's agent stated some work was to be performed by the tenants in lieu of paying a security deposit. The landlord's agent stated that a value was not assigned to the work to be performed.

The tenants did not pay rent for the months of July 2013 and on July 14, 2013 a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) was posted to the door of the rental unit. The Notice indicates \$1,250.00 was outstanding as of July 1, 2013 and has a stated effective date of August 1, 2013. The tenants did not pay the outstanding rent or file to dispute the 10 Day Notice.

The tenants did not pay any monies for the months of August 2013 and September 2013 yet continue to occupy the rental unit.

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

Documentary evidence provided for my review included a copy of: the 10 Day Notice; a signed Proof of Service of the 10 Day Notice; registered mail receipts; and, a receipt issued to the tenants on June 1, 2013 reflecting a payment of \$1,250.00 for the rental unit and a notation that rent is due on the 1st day of every month and "no damage deposit as tenant agreed to do the repairs needed".

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. By definition under the Act, a tenancy agreement includes an agreement entered into orally. Upon consideration of the undisputed testimony of the landlord's agent and the receipt issued June 1, 2013 I am satisfied that a tenancy formed between the parties and that the monthly rent of \$1,250.00 was payable on the 1st day of every month.

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 a 10 Day Notice to end the tenancy was posted on the door of the rental unit on July 14, 2013 as submitted by the landlord. 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 1, 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 July 2013 and since the tenants continued to occupy the rental unit after the effective date of August 1, 2013, I further award the landlord loss of rent for the months of August 2013 and September 2013. I also award the landlord the \$50.00 filing fee paid for this application.

As a dollar value of the work performed by the tenant in lieu of paying a security deposit was not presented to me, I make no finding with respect to a security deposit.

In light of the above, the landlord is provided a Monetary Order in the amount of \$3,800.00 calculated as: unpaid and/or loss of rent for August – September 2013 (\$1,250.00 x 3) plus \$50.00 for the filing fee to serve upon the tenants and enforce 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 provided a Monetary Order in the sum of \$3,800.00 to serve and enforce as necessary. I have made no finding as to a security deposit.

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 19, 2013

Residential Tenancy Branch

