



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORTRAIT HOMES SILVER VALLEY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MND, MNR, MNSD, MNDC, FF, 0

Introduction

This hearing was convened by way of conference call in response to an application by the landlord for an order of possession and a monetary order for unpaid rent or utilities. The landlord also applied to; keep all or part of the pet damage or security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the filing fee from the tenant for the cost of the application.

The landlord's agent made the application and served the tenant with a copy of the application and Notice of Hearing documents by registered mail. The Canada Post tracking number was provided as evidence for this method of service. Based on this and the absence of any other evidence to refute this, I find that the tenant was served the hearing documents as per the *Residential Tenancy Act*.

An agent for the landlord attended the hearing. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the Act. At the start of the hearing the landlord withdrew the portion of the application for damages to the rental unit to deal with this after the tenancy ends. The other issues claimed on the application by the landlord were dealt with in the remainder of the application.

All of the testimony and documentary evidence submitted was considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent totaling \$5,000?
- Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that the tenancy started in July, 2010 on a month to month basis. The tenant paid a \$600.00 security deposit before the tenancy started, which the landlord still retains. Currently, rent in the amount of \$1,200.00 is payable by the tenant on the first day of each month.

The landlord's agent testified that the tenant had continually been making partial payments towards his rent since the start of the 2013 year, and in some months not paying rent at all, in the following amounts:

- January – \$400, leaving an outstanding balance of \$800.00
- February – nonpayment, leaving an outstanding balance of \$1,200.00
- March – \$600, leaving an outstanding balance of \$600.00
- April – \$900, leaving an outstanding balance of \$300.00
- May – \$700, leaving an outstanding balance of \$500.00
- July – nonpayment, leaving an outstanding balance of \$1200.00
- August – nonpayment, leaving an outstanding balance of \$1200.00
- September - nonpayment, leaving an outstanding balance of \$1200.00

The landlord's agent testified that by the start of June, 2013 he had enough and as a result, served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on June 6, 2013 by posting it on the tenant's door. The notice was provided as evidence and shows an expected date of vacancy of June 16, 2013, for a total amount of \$5,286.47 of unpaid rent which was due on June 1, 2013. The amount included late fees which the tenant was responsible for paying when rent was paid late. However, the landlord testified that he did not want to make a claim for these late fees during this hearing.

The landlord testified that there was a total of \$7,686.47 in unpaid rent arrears payable by the tenant but only elected to claim \$5,000.00 in this application.

Analysis

Section 46(4) and (5) of the *Residential Tenancy Act* states that within five days of a tenant receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a tenant must pay the overdue rent or apply for dispute resolution; if the tenant fails to do either, then they are conclusively presumed to have accepted the notice to end tenancy and they must vacate the rental unit on the date to which the notice relates.

Having examined the notice to end tenancy, I find that the contents of the approved form complied with the requirements of the *Act*.

As a result, I find that the tenant was served by the landlord with the notice to end tenancy on June 6, 2013, by posting it on the tenant's door. The *Act* states that documents served in this manner are deemed to have been received three days after such mailing. Therefore, I find that the tenant was deemed to be served on June 9, 2013, and had until June 14, 2013 to pay the overdue rent or apply to dispute the notice as required by the *Act*, neither of which the tenant did. As a result, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on June 26, 2013 and therefore, the landlord is entitled to an Order of Possession.

In relation to the monetary claim, I am satisfied that the tenant owes the landlord more than \$5,000 in unpaid rent since the start of 2012. As a result, I award the landlord a total of \$5,000.00 as claimed on the landlord's application. As the landlord has been successful in this matter, the landlord is entitled to recover from the tenant the \$50.00 filing fee for this application pursuant to Section 72(2) (b) of the *Act*. Therefore, the total amount payable by the tenant to the landlord is \$5,050.00. As the landlord already holds a \$600.00 security deposit and elected to use this for nonpayment of rent, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the *Act*. As a result, the landlord is awarded \$4,450.00.

Conclusion

For the reasons set out above, I grant the landlord an Order of Possession effective **2 days after service on the tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the landlord a Monetary Order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$4,450.00**. This order may be filed in the Provincial Court (Small Claims) 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 24, 2013

Residential Tenancy Branch

