



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TLA ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application by the landlords for an Order of Possession relating to unpaid rent or utilities and for cause. The landlords also applied for a Monetary Order for: unpaid rent or utilities; 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 this application.

The landlords made the application and served the tenant with a copy of the application, Notice of Hearing documents and evidence by registered mail. The Canada Post tracking receipt was provided as documentary evidence and shows that the tenant signed for the receipt of these documents. Based on this, I find that the tenant was served the hearing documents as per the *Residential Tenancy Act* (the '*Act*').

The landlords' agent attended the hearing to give affirmed testimony and provided evidence in advance of the hearing. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence submitted was considered in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent?
- Are the landlords entitled to a Monetary Order for outstanding rent relating to August, 2013 and unpaid rent relating to September 2013?
- Can the landlords keep all the security deposit in full satisfaction of the claim?

Background and Evidence

The landlords' agent testified that the tenancy started on October 1, 2011 on a month-to-month basis and prior to this the tenant paid a security deposit of \$200.00, which the

landlord still retains. Currently, rent in the amount of \$420.00 is payable by the tenant on the first day of each month.

The landlords' agent testified that the tenant only paid a partial amount of rent on August 1, 2013 leaving an outstanding balance of \$105.00. As a result, the landlords served the tenant personally with a 10 Day Notice to End Tenancy for Unpaid Rent on August 8, 2013. The notice was provided as evidence for the hearing and shows an expected date of vacancy of August 18, 2013 with an amount of \$105.00 for unpaid rent due on August 1, 2013.

The landlords' agent testified that the tenant also failed to pay for September, 2013 rent in the amount of \$420.00 and as a result, seeks to recover lost rent from the tenant for a total amount of \$525.00.

The tenant failed to attend the hearing or provide any written submissions prior to this hearing taking place.

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 complied with the requirements of the *Act*.

As a result, I find that the tenant was served by the landlords with the notice to end tenancy personally on August 8, 2013. Therefore, the tenant had until August 13, 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 August 18, 2013 and therefore, the landlords are entitled to an Order of Possession.

In relation to the monetary claim, I award the landlords the outstanding rent for the month of August, 2013 and since the tenant is still occupying the rental suite and has not paid for September, 2013 rent, I also award the landlord unpaid rent for September, 2013 for a total award of \$525.00.

As the landlords have been successful in this matter, the landlords are also entitled to recover from the tenant the \$50.00 filing fee for the cost of this application pursuant to

Section 72(2) (b) of the *Act*. Therefore, the total amount payable by the tenant to the landlords is \$575.00.

As the landlords already hold a \$200.00 security deposit, I order the landlords to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the *Act*. As a result, the landlords are awarded \$375.00.

In relation to the landlords claim for an Order of Possession based on cause, as the landlords have been successful in obtaining an Order of Possession to end the tenancy, I dismiss this portion of the application.

Conclusion

For the reasons set out above, I grant the landlords 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 landlords a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$375.00**. This order must be served on the tenant and may then 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 30, 2013

Residential Tenancy Branch

