



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

The tenant did not attend. The landlord provided sworn evidence that she served the Notice to end Tenancy dated June 21, 2013 by posting it on the door and the Application for Dispute Resolution by registered mail. The effective date on the Notice is automatically corrected to July 1, 2013 pursuant to section 53 of the Residential Tenancy Act as a Notice to End Tenancy for unpaid rent must give at least 10 days notice to the tenant. It was verified online that after attempted delivery and several notices to the tenant resulting in it being unclaimed, the Application was returned to the sender. I find that the tenant is deemed to be served with the Application/Notice of Hearing according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated June 21, 2013 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

The tenant did not attend but is deemed to be served with the Application/Notice of Hearing by registered mail. The landlord was given opportunity to be heard, to present evidence and to make submissions. The landlord said she also posted the Notice of Hearing on the tenant's door and it was taken off the door so he had notice of the

hearing today. The landlord requested that the Application be amended to show her first name as well as her surname. The amendment was granted.

The undisputed evidence of the landlord is that the tenancy commenced in October 2007, a security deposit of \$450.00 was paid and rent is currently \$1000 a month. The landlord said the tenant has not paid any rent since January 2013 and he keeps dodging her when she tries to see him. She said that she did not serve notice earlier because the tenant in the past had paid his rent, sometimes irregularly or late but he usually paid. Now, she says, there are unknown people entering the suite, he does not answer phone calls or the door although she sees him inside. She requests an Order of Possession and a monetary order for unpaid rent. On her application, she asks for \$7200 but she says he now owes \$9000 including September rent.

In evidence is a copy of the Notice to End Tenancy and a prior one issued in April 2013. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

I find that the landlord is entitled to an Order of Possession. There is outstanding rent. The Tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the Residential Tenancy Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective two days from service.

Monetary Order

I find that there are rental arrears in the amount of \$9000 representing rental arrears from January to September 2013. However, the landlord limited her claim on the Application to include only rent to the end of July 2013 and based on the principles of natural justice, I find she is limited to this amount as this is the amount of which the tenant had notice. She did not apply to retain the security deposit to offset the amount owing.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to recover filing fees paid for this application. **I give the landlord leave to reapply for further amounts owing. The tenant's security deposit will remain in trust and the landlord is advised to consult section 38 of the Act and deal with it accordingly.**

Calculation of Monetary Award:

Rent arrears January to July 2013	7000.00
Filing fees for this application	100.00
Total Monetary Order to Landlord	7100.00

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 04, 2013

Residential Tenancy Branch

