



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's Application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and, authorization to retain the security deposit. The landlord named four co-tenants in filing this Application for Dispute Resolution and served each respondent with hearing documents, including an amended Application, by way of registered mail packages sent to each respondent at the rental unit on September 27, 2013 and October 22, 2013. None of the named respondents appeared at the hearing. The landlord orally provided the registered mail tracking numbers as proof of service. The landlord testified that one of the named respondents picked up the registered mail packages but the other three respondents have not.

Section 90 of the Act deems a person to have received documents five days after mailing so that a person cannot avoid service by refusing to accept or pick up registered mail. Accordingly, I was satisfied the respondents were served with notification of this proceeding and I continued to hear from the landlord without the respondents present.

Preliminary and Procedural Matters – Identity of Tenant(s)

I noted the written tenancy agreement was signed on May 28, 2012 by two co-tenants (referred to by initials DO and MPM). In January 2013 the former building manager scratched out the name of MPM and added the name of another co-tenant (referred to by initials TE) on page 1 of the tenancy agreement; however, TE did not sign the tenancy agreement. However, the former building manager completed an Intent to Rent form for TE in January 2013 and rent payments were sent to the landlord by the Ministry on behalf of TE.

The landlord explained that four respondents were named in this Application for Dispute Resolution because rent had been collected and receipts issued to a number of occupants residing in the rental unit. In doing so, the landlord was of the position that a tenancy may have formed with those occupants.

Upon review of all of the documents provided as evidence I find there to be clear and consistent evidence that DO is a tenant of this rental unit. However, I find the evidence less clear and inconsistent that other occupants entered into a tenancy agreement with the landlord. In particular, I note the content of the following documentation demonstrates the inconsistencies in the treatment of the other occupants as tenants.

- The written tenancy agreement indicates DO was privy to and agreed to the terms of tenancy as evidenced by his signature on the tenancy agreement but none of the other named respondents signed such a document;
- A 10 Day Notice issued by the landlord on March 2, 2013 named only DO as the tenant.
- A breach letter issued by the landlord on September 3, 2013 named only DO as the tenant.
- A 10 Day Notice issued September 5, 2013 named DO and other occupant (referred to by initials AG) as the tenants but the other two respondents were not named on the 10 Day Notice.

I find the best evidence as to the identity of the tenant(s) is that reflected on the written tenancy agreement in the absence of other evidence to show that the tenancy with DO ended and/or was replaced with new tenancy agreements.

In light of the above, I find the tenancy entered into May 28, 2012 was in effect when the 10 Day Notice that is the subject of this proceeding was issued. Accordingly, I have amended this Application for Dispute Resolution to name DO as the tenant and exclude the other respondents. I consider the other persons occupying the rental unit to be occupants.

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 rent in the amount claimed, as amended?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced July 1, 2012 and the landlord collected a security deposit of \$525.00. The tenant is required to pay rent of \$1,050.00 on the 1st day of every month. The landlord posted a 10 Day Notice to end Tenancy for Unpaid Rent on the door of the rental unit on September 5, 2013. The Notice indicates rent of \$1,282.50 was

outstanding as of September 1, 2013 and has a stated effective date of September 19, 2013. The tenant did not file to dispute the 10 Day Notice.

The landlord submitted that three payments were received since the Notice was posted: \$65.00; \$375.00 and \$400.00 for which the landlord issued receipts for use and occupancy only.

In addition to an Order of Possession, the landlord requested a Monetary Order for the balance of unpaid rent plus loss of rent for the month of October 2013 in the sum of \$1,492.50. The landlord submitted a ledger showing how this amount was determined.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to serve a 10 Day Notice to End Tenancy for Unpaid Rent.

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 the landlord posted a 10 Day Notice to End Tenancy on the door of the rental unit on September 5, 2013. I find the stated effective date of September 19, 2013 complies with the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on September 19, 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.

Based upon the undisputed evidence before me, I find the landlord entitled to recover unpaid rent for the months up to and including September 2013. I further award the landlord loss of rent for October 2013 since the tenant did not return vacant possession of the unit to the landlord when required. Therefore, I award the landlord the sum of \$1,492.50 as claimed for unpaid and/or loss of rent for the months up to and including October 2013.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid/Loss of Rent, as claimed	\$ 1,492.50
Filing fee	50.00
Less: security deposit	<u>(525.00)</u>
Monetary Order	\$ 1,017.50

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,017.50 to serve and enforce as necessary.

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: October 31, 2013

Residential Tenancy Branch

