



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession and a Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord presented evidence that the hearing documents were sent to the tenant via registered mail at the rental unit on August 30, 2013. The evidence included a registered mail receipt, including tracking number, and tracking information showing the tenant received the registered mail on September 3, 2013. I was satisfied the tenant has been served with notification of this proceeding. Therefore, I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The tenancy commenced November 1, 2012 and the tenant is required to pay rent of \$1,050.00 on the 1st day of every month for a fixed term set to expire October 31, 2013. On February 27, 2013 the landlord was provided an Order of Possession due to unpaid rent and a Monetary Order in the amount of \$1,725.00. The landlord agreed to reinstate the tenancy as the tenant promised to pay rent; however, the tenant continued to make sporadic rent payments. Since filing the previous Application for Dispute Resolution, the landlord recorded receipt of the following payments from the tenant:

February 12, 2013	\$900.00
April 6, 2013	\$1,050.00
May 1, 2013	\$1,050.00
July 10, 2013	\$1,050.00

On August 13, 2013 the landlord sent the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenant at the rental unit via registered mail. The 10 Day Notice indicates rent of \$3,975.00 was outstanding as of August 1, 2013 and has a stated effective date of August 26, 2013. The landlord provided proof of service of the 10 Day Notice by way of a registered mail tracking number and tracking information showing the tenant received the 10 Day Notice on August 19, 2013. The landlord filed this Application for Dispute Resolution on August 30, 2013.

The landlord calculated the \$3,975.00 that appears on the 10 Day Notice as: the balance reflected on the Monetary Order issued February 27, 2013, plus the monthly rent of \$1,050.00 for the months of March through August 2013 and then subtracted the above noted payments.

The landlord testified that he received \$2,100.00 at the end of September 2013 by way of direct deposit from the tenant. In addition, the tenant indicated in an email that the balance of arrears would be paid October 1, 2013 but the stated that did not happen. The landlord takes the position that the \$2,100.00 received at the end of September 2013 is the equivalent of two months of rent and is for use and occupancy of the unit until the end of October 2013. Therefore, the landlord requested an Order of Possession be provided effective October 31, 2013.

Documentary evidence included copies of: the tenancy agreement; the 10 Day Notice dated August 31, 2013; a calculation of the amount appearing on the 10 Day Notice; the Order of Possession and Monetary Order issued February 27, 2013; and, registered mail receipts and tracking information.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. I am satisfied the parties agreed to reinstate the tenancy after the Order of Possession was issued on February 27, 2013 with the same terms reflected in the written tenancy agreement entered into October 25, 2012.

Where a tenant does not pay rent that is due to the landlord, 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 the landlord sent a 10 Day Notice to end the tenancy to the tenant via registered mail on August 13, 2013 and the tenant is deemed to have received it five days later under section 90 of the Act. I find the stated effective date of August 26, 2013 to be compliant 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 August 26, 2013. I accept the landlord's submissions that the tenancy has not been reinstated with the receipt of \$2,100.00 as I find the tenant was on notice that the landlord wished to end the tenancy upon receipt of the hearing package and because the tenant did not fulfill his promise to pay the arrears to the landlord on October 1, 2013. I accept that the \$2,100.00 received by the landlord is for use and occupancy for the months of September and October 2013. Therefore, I grant the landlord's request for an order of Possession effective October 31, 2013.

As provided in the decision that accompanies the Monetary Order issued February 27, 2013 the landlord has already been awarded compensation for rent for the months of December 2012 through February 2013 less the payment of \$900.00 made on February 12, 2013 and authorization to retain the security deposit in partial satisfaction of the rent owed at that time. As the landlord was informed during this hearing, any Monetary Order I provide with this decision shall not include any monies already included in a previous Monetary Order. Rather, the landlord remains at liberty to enforce the Monetary Order already provided to him on February 27, 2013. Therefore, by way of this decision and the Monetary Order that accompanies it, I find the landlord entitled to the following monetary compensation:

Rent: March 2013 through August 2013 (\$1,050.00 x 6)		\$6,300.00
Less: payments made on:		
April 6, 2013	\$1,050.00	
May 1, 2013	1,050.00	
July 10, 2013	1,050.00	\$3,150.00
Plus: filing fee		<u>50.00</u>
Monetary Order		\$3,200.00

To enforce the Monetary Order it must be served upon the tenant and the landlord may file it in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been provided an Order of Possession effective October 31, 2013. The landlord has been provided a Monetary Order with this decision in the sum of \$3,200.00. This Monetary Order and the one provided to the landlord on February 27, 2013 may be enforced by filing them in Provincial Court (Small Claims).

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 09, 2013

Residential Tenancy Branch

