



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Istrata Property Management Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; the landlord's agent declares that the tenant was served in person on August 28, 2013

The landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

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?
- Is the landlord permitted to keep the tenants security deposit?

Background and Evidence

The landlord's agent testifies that this tenancy started on May 01, 2010 for a fixed term that expired on October 31, 2010. The tenancy then reverted to a month to month tenancy. Rent

for this unit is now \$735.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$350.00 and a key deposit of \$50.00 on May 01, 2010.

The landlord's agent testifies that the tenant failed to pay rent for July, 2013 on the day it was due. A 10 Day Notice was issued to the tenant on July 08, 2013; The Notice was served upon the tenant on July 08, 2013 by posting it to the tenant's door. The landlord has provided a copy of the Notice in evidence and the Notice has an effective date of July 18, 2013. The Notice informs the tenant that the tenant owes \$735.00 for rent and \$25.00 for a late fee.

The landlord's agent testifies that the tenant paid the amount of \$300.00 on July 08, 2013. The landlord testifies that the tenant failed to pay for August on the day it was due or any further rent arrears for July. However, on August 11, 2013 the tenant paid \$75.00 and on August 23, 2013 the tenant paid \$400.00. The tenants failed to pay September's rent on the day it was due but paid \$300.00 on September 06 and \$400.00 on September 26, 2013. The landlord's agent testifies that these payments were accepted for use and occupancy only. The total amount of outstanding rent for these months is \$730.00.

The landlord's agent testifies that the tenant has failed to pay rent for October, 2013 of \$735.00. The landlord's agent requests to amend their application to include this rent in the Monetary Order. The landlord's agent testifies that the tenancy agreement informs the tenant that a late fee of \$25.00 will be applied in any month in which rent is late. The landlord's agent also seeks a Monetary Order for the late fees for July, August, September and October of \$100.00.

The landlord seeks an Order to keep the security deposit of \$350.00 to offset against the unpaid rent. The landlord requests an Order of Possession effective as soon as possible.

Analysis

Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied with the undisputed evidence before me that the tenant has failed to pay all the rent for July, August and September 2013 to an amount of \$730.00. I will allow the landlord to amend the application to include unpaid rent up to October 15, 2013 as the tenant continues to have possession of the rental unit and would be aware that rent was due on the first day of October. I have limited this request up to October 15, 2013 as the landlord will be issued with an Order of Possession and may be able to still re-rent the unit for the remainder of October after the tenant vacates the rental unit. If the landlord is unable to do so the landlord is at liberty to file a new application for the balance of rent for October, 2013. Therefore the landlord is entitled to recover rent arrears to the sum of **\$1,097.50**. I further find the landlord is entitled to recover late fees for July, August, September and October of **\$100.00** as the tenant was aware that these late fees would be applied if rent was paid late in any month when the tenant signed the tenancy agreement.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$350.00** and key deposit of **\$50.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order pursuant to s.67 of the *Act* for the balance owing as follows:

Outstanding rent	\$1,097.50
Late fees	\$100.00
Less security deposit and key deposit	(-\$400.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$847.50

I have reviewed all documentary evidence and accept that the tenant has been served with Notice to End Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenant on July 11, 2013 and the effective date of the Notice has been amended to July 21, 2013 pursuant to s. 53 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$847.50**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court 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: October 07, 2013

Residential Tenancy Branch

