



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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.

The hearing documents were served, by the landlord to the tenant, by posting them to the tenants door on August 24, 2013.

The landlord 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 due to unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The landlord testifies that this month to month tenancy started on July 01, 2013. Rent for this unit is \$800.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy.

The landlord testifies that the tenant failed to pay rent for August on the day it was due. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent by posting it to the door of the rental unit on August 10, 2013. This Notice informed the tenant that he owes rent of \$800.00 and has five days to either pay the rent or dispute the Notice or the tenancy will end on August 20, 2013. The landlord testifies that since serving that Notice the tenant has failed to make any further rent payments for August, September and October, 2013. The landlord testifies that at present the tenant owes \$2,400.00.

The landlord seeks an Order to recover the unpaid rent and to keep the security deposit to offset against the unpaid rent. The landlord also seeks an Order of Possession to take effect as soon as possible.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with Notice to End Tenancy as declared by the landlord. The Notice is deemed to have been received by the tenant on August 13, 2013 and the effective date of the Notice is amended to August 23, 2013 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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 amended effective date of the Notice.

With regard to the landlord application for a Monetary Order for unpaid rent; sections 88 and 89 of the *Act* determine the method of service for certain documents. The landlord has

applied for a Monetary Order which requires that the landlord serve the tenant as set out under Section 89(1). As the landlord posted the application and Notice of Hearing to the tenant's door, this method of service is not acceptable under section 89(1) of the *Act*.

Consequently, this section of the landlord's application is dismissed with leave to reapply.

I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. The landlord may deduct this amount from the tenant's security deposit leaving a balance of \$350.00 which must be dealt with under s. 38 of the *Act*. The landlord is at liberty to file a new application to keep the balance of the security deposit.

Conclusion

I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act* effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is not entitled to monetary compensation due to incorrect service of the hearing documents concerning a Monetary Order. Therefore this section of the landlords claim is dismissed with leave to reapply.

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 02, 2013

Residential Tenancy Branch

