



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ESCORT INVESTMENT CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR MNSD 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 gave sworn evidence that they had served the tenants personally with the Notice to end Tenancy dated September 6, 2013 and with the Application for Dispute Resolution. I find the landlord's evidence credible as they cited specific dates and times of service to each of the two tenants. I find that the tenants were served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated September 6, 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 although served with the Application/Notice of Hearing. The landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenant commenced living in the premises in December, 2011, a security deposit of \$375 was paid in November 2011 and rent is currently \$787 a month.

It is undisputed that the tenant owes \$394.50 in rent for September 2013 and \$782 for October, less a payment from the Ministry for \$392.50 made for October's rent. The

landlord said the Ministry payment is an automatic deposit but as this is October 1, 2013, she will put a receipt in the tenant's door indicating that the Ministry payment is "for use and occupancy only" and she is not reinstating the tenancy by accepting it. The landlord requests an Order of Possession and a monetary order for rental arrears and an amendment to retain the security deposit to offset the amount owing. The landlord queried whether she could make a written agreement with the tenant to reinstate the tenancy if they paid all outstanding rent; I advised her it was possible.

In evidence is the Notice to End Tenancy, a Notice of a rent increase and a copy of the lease. The tenant submitted no documents to dispute the landlord's application.

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 \$394.50 for each of September and October 2013. I find the tenancy is not reinstated as the landlord has limited the acceptance of automatic payments from the Ministry "for use and occupancy only". The amendment to retain the security deposit to offset the amount owing is granted.

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 retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Unpaid rent September 2013	394.50
Unpaid rent Oct. 2013(\$787-392.50)	394.50
Filing fee	50.00

Less security deposit (no interest 2011-13)	-375.00
Total Monetary Order to landlord	464.00

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: October 01, 2013

Residential Tenancy Branch

