



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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, or 47 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 testimony that he served the Notice to end Tenancy dated September 4, 2013 personally and the Application for Dispute Resolution by registered mail. It was verified online that the Applications were sent by registered mail on September 19, 2013, Canada Post attempted delivery and several notices to pick it up were left without success. I find that the tenants are deemed to be served with the Application/Notice of Hearing 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 4, 2013 for unpaid rent and a Notice to End Tenancy dated August 15, 2013 for cause. Is the landlord now entitled to an Order of Possession pursuant to either notice and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

Only the landlord attended the hearing and was given opportunity to be heard, to present evidence and to make submissions. The tenants are deemed to be served with the Application/Notice of Hearing. The undisputed evidence is that the tenancy commenced on May 15, 2013 for a fixed term until June 30, 2014, a security deposit of \$600 was paid and rent is \$1200 a month. The tenant has not paid rent for September

2013 and the landlord thinks they have left the premises although they have left many items, including a trailer on the property. The landlord is claiming rental arrears of \$1235 and to retain the security deposit to offset the amount owing. The tenant did not submit any documents to dispute the amount owing.

The landlord also attempted to put forward a damage claim in the hearing. However, he did not specify on the face of this application that he was claiming damages, what the damages were and what specific amounts he was claiming. I am unsure as to how much he understood the problem with his application as there was some language difficulty; I note that our office had cautioned him when he filed to consider finding assistance of an interpreter but no interpreter was present in the hearing.

In evidence are two Notices to End Tenancy, statements of the landlord, the lease and some photographs.

On the basis of the 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. The landlord was cautioned in the hearing not to use "self-help" but to follow the procedure as set out on the Residential Tenancy Branch website to enforce the Order of Possession and get the tenants' goods removed from his property.

Monetary Order

I find that there are rental arrears in the amount of \$1200 representing rental arrears for September, 2013. The landlord said in the hearing that the tenant only owed rent for September and did not justify the extra \$35 he requested. Therefore, I find him entitled to recover rent for September only in the amount of \$1200 as specified in the lease.

Although the landlord requested to retain the security deposit to offset the amount owing, I find the tenant has not vacated the property as many of their belongings remain on the property. Therefore, I will not deduct the security deposit from the rent owing and leave this to be dealt with after the tenant has totally vacated the property.

When claiming damages, the landlord is required to notify the other party of this claim. Furthermore, he is required to prove on a balance of probabilities that the tenant did the damage, that it was beyond reasonable wear and tear and the amount it cost to repair the damage. Invoices to support amounts cost to repair are helpful.

I find in this case that the landlord did not notify the tenant of a claim for damages and he has not submitted sufficient information to support a claim for damages. Therefore, I dismiss his claim for damages and give him leave to reapply. I note further that this was a fixed term lease and the tenant may be responsible for further rental loss. I advise the landlord to consult the website of the Residential Tenancy Branch and inform himself of the law and procedures to make his claims.

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. The security deposit of the tenant will remain in trust to be dealt with pursuant to section 38 after the tenancy ends. I give the landlord leave to reapply for further amounts owed for rental loss and damages.

Calculation of Monetary Award:

September rent	1200.00
Filing fee	50.00
Total Monetary Order to landlord	1250.00

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 03, 2013

Residential Tenancy Branch

