



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, 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 provided evidence that she had served the Notice to end Tenancy dated August 8, 2013 by posting it on the door and the Application for Dispute Resolution by registered mail. It was verified online that the registered mail was available for pickup from October 11, 2013 and several notices were left but was returned to the sender on October 30, 2013 when the tenant did not claim it. I find that the tenant is 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 August 8, 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:

Only the landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on December 15, 2012 and is a fixed term until November 30, 2013, a security deposit of \$475 was paid and rent is currently \$950 plus \$25 parking per month. The landlord said the tenant had made some partial payments and now owes \$935 in rent arrears to October 31, 2013. She said that when she accepted the partial payments, she noted on

the receipt and also told the tenant that “the order of possession still applies” to make it clear to the tenant that she was not reinstating the tenancy by accepting partial payments. However, she said she has no desire to evict the tenant and will not enforce an Order of Possession if the tenant pays all the arrears including current rent due.

The landlord is claiming an Order of Possession, the rental arrears of \$935 plus filing fee and to retain the security deposit to offset the amount owing. The tenant did not submit any documents to dispute.

In evidence is the Notice to End Tenancy, the registered mail receipt, and a copy of the lease. 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. I find that the landlord’s notation on the receipts for partial payment that “the order of possession still applies” was sufficient to inform the tenant that by accepting payment, the landlord was not reinstating the tenancy. 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 \$935 representing rental arrears to October 31, 2013.

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:

Rent arrears to Oct. 31, 2013	935.00
Filing fee for this application	50.00
Less security deposit (no interest 2012-13)	-475.00
Total Monetary Order to landlord	510.00

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 31, 2013

Residential Tenancy Branch

