



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, OPT, LAT, OPR, MNR, MNSD, MNDC, FF

Introduction

This decision dealt with an application by the tenant for a monetary order, an order compelling the landlord to comply with the Act, an order of possession and an order authorizing the tenant to change the locks. The landlord filed a cross-application seeking an order of possession, a monetary order and an order authorizing him to retain the security deposit in partial satisfaction of the claim.

The landlord presented evidence showing that he served the tenant with his application for dispute resolution and notice of hearing via registered mail sent on October 15. I found that the tenant had been properly served with notice of the claim against him and the hearing proceeded in his absence.

As the tenant did not appear at the hearing to advance his claim, the claim is dismissed.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord to a monetary order as claimed?

Should the landlord be authorized to retain the security deposit?

Background and Evidence

The landlord's undisputed evidence is as follows. The tenancy began on January 1, 2012 at which time a \$475.00 security deposit was paid. Rent was set at \$950.00 per month, payable in advance on the first day of each month. In or about March 2013, the parties had a discussion at which time the tenant verbally agreed to pay \$1,000.00 per month in rent beginning in that month.

The tenant failed to pay the full amount of rent due in the month of September and on September 20, the landlord served the tenant with a notice to end tenancy for unpaid rent (the "Notice") by posting the Notice to the door of the rental unit.

At the time the landlord filed his claim on October 11, 2013, there was \$380.00 in arrears owing for September 2013 and no rent was paid for the months of October and November. On November 4, the tenant made a \$700.00 payment which the landlord accepted for use and occupancy only. The tenant made a second \$700.00 payment on November 20 which was also accepted for use and occupancy.

The landlord seeks to recover rental arrears and obtain an order of possession as well as recover the \$50.00 filing fee paid to bring his application.

Analysis

I accept the landlord's undisputed testimony and I find that the tenant failed to pay the full amount of rent due in the month of September. I find that the landlord posted the Notice on September 20 and pursuant to section 90(c) of the Act, I find that the tenant received the Notice 3 days later on September 23. The tenant failed to pay the full amount of rental arrears within 5 days of having received the Notice and did not apply for dispute resolution to dispute the Notice and I find that pursuant to section 46(5), the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession and I award him that order. the order must be served on the tenant and may be filed in the Supreme Court for enforcement.

Turning to the monetary claim, I find that the landlord illegally increased the rent by \$50.00 per month beginning in March 2013. Section 42 of the Act requires that a notice of rent increase be made in the approved form and as the landlord acknowledged that the increase was implemented on the basis of an oral agreement, I find that it cannot be enforceable. I therefore find that the tenant's rent remained at \$950.00 per month and that the tenant should be credited with the \$300.00 overpayment made in the months of March – August inclusive (6 x \$50).

The landlord said the tenant owed \$380.00 for the month of September. I find that the tenant actually owed \$330.00 as he was not required to pay the \$50.00 illegal rent increase for that month and was responsible to pay just \$950.00 for each of the following months. I find that the landlord is entitled to recovery as follows. This table

includes recovery of the filing fee as I find that the landlord is entitled to recover that sum. I order the landlord to retain the \$475.00 security deposit.

September arrears	\$ 330.00
October rent	\$ 950.00
November rent	\$ 950.00
Filing fee	\$ 50.00
Subtotal:	\$2,280.00
Overpayment from March – August	(\$300.00) CR
November 4 payment	(\$700.00) CR
November 20 payment	(\$700.00) CR
Security	(\$475.00) CR
Total:	\$ 105.00

I grant the landlord a monetary order under section 67 for \$105.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$105.00. The tenant's claim is dismissed.

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: November 21, 2013

Residential Tenancy Branch

