



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMIRALI H. MOHAMEDALI PERSONAL LAW CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and Monetary Order for unpaid rent. The tenants did not appear at the hearing. The landlord's agent testified that the hearing documents were sent to each tenant on October 17, 2013 by registered mail using the rental unit address. The landlord's agent orally provided the registered mail tracking numbers during the hearing and confirmed the tenants were still residing in the rental unit at the time of mailing. Section 90 of the Act deems a person to have received documents five days after mailing so that a person cannot avoid service by refusing to accept or pick up registered mail. I was satisfied the landlord sent the hearing documents to each tenant in a manner that complies with the Act and the tenants are deemed to have been served five days after mailing. As such, I continued to hear from the landlord's agents without the tenants present.

The landlord requested the application be amended to include loss of rent for the month of November 2013 as the tenants have continued to occupy the rental unit in November 2013 as evidenced by an email sent to the landlord by the tenant on November 5, 2013. The landlord also requested an amendment so as to obtain authorization to retain the security deposit in partial satisfaction of the rent owed by the tenants. I permitted the application to be amended as I was satisfied the tenants have benefited from continued use and occupation of the rental unit and because retention of the security deposit will reduce the landlord's Monetary Order.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent for September, October and November 2013?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The parties executed a written tenancy agreement for a tenancy set to commence April 15, 2013 for a fixed term set to expire March 31, 2014. The monthly rent is \$1,250.00. The tenants paid a security deposit of \$625.00 and pro-rated rent for the month of April 2013 with subsequent rent payments due on the 1st day of every month.

The tenants failed to pay rent for September 2013. Repeated attempts to contact the tenants went unanswered. Believing the unit must be abandoned the landlord's agent entered the unit on September 19, 2013 and found that the unit had not been abandoned. The landlord's agent affirmed that both pages of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) were posted on the door of the rental unit on September 19, 2013. The Notice indicates rent of \$1,250.00 was outstanding as of September 1, 2013 and has a stated effective date of October 2, 2013.

The landlord testified that the tenants did not pay the outstanding rent, and did not pay any monies for the months of October 2013 or November 2013. The tenants did not file an Application for Dispute Resolution to dispute the Notice. The last communication with the tenants was by way of an email sent to one of the landlord's agents by the tenant on November 5, 2013 whereby the tenant promised to pay the outstanding rent in the next few days. No monies were received.

Documentary evidence provided to me included: the tenancy agreement and the 10 Day Notice.

Analysis

Where a tenant does not pay rent that is due to the landlord, the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the evidence before me that the landlord posted a 10 Day Notice on the door of the rental unit on September 19, 2013. Pursuant to section 90 the 10 Day Notice is deemed to be received by the tenants three days later. I find the stated effective date of October 2, 2013 is compliant with the Act.

Since the tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on October 2, 2013 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for the months of September 2013 and October 2013 in the amount of \$2,500.00. I further award the landlord loss of rent of \$1,250.00 for the month of November 2013 as I am satisfied the tenants did not vacate the rental unit when required to do so, causing the landlord to suffer further losses, and the tenants continued to benefit from occupation of the rental unit in the month of November 2013.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid and/or Loss of Rent: Sept – Nov 2013	\$ 3,750.00
Filing fee	50.00
Less: security deposit	<u>(625.00)</u>
Monetary Order	\$ 3,175.00

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court if necessary.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$3,175.00 to serve and enforce as necessary.

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 27, 2013

Residential Tenancy Branch

