



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LLA INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as evidence the hearing documents were sent to the tenant at the rental unit on October 4, 2013. The landlord confirmed he tenant continues to reside in the rental unit. Section 90 of the Act deems a person to have received documents five days after mailing. I was satisfied the tenant was served in manner that complies with the Act and I continued to hear from the landlord without the tenant present.

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?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced September 1, 2012 on a month to month basis. The tenant is required to pay rent of \$345.00 on the 1st day of every month. The tenancy agreement reflects a security deposit of \$345.00.

On August 6, 2013 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) and personally served it upon the tenant on that same day, in the presence of a witness. The Notice indicates rent of \$690.00 was outstanding as of August 1, 2013 and has a stated effective date of August 16, 2013. At the time the Notice was issued, two months of rent was outstanding.

The landlord testified that after serving the Notice the landlord received a payment of \$345.00 then on October 20, 2013 the landlord receive two more cheques from the Ministry in the amount of \$345.00 each. He landlord issued receipts for "use and occupancy only". The landlord testified that as of this date the landlord has suffered a loss of two months of rent.

The landlord requested an Order of Possession effective on November 30, 2013 and monetary compensation for two months of loss of rent.

The landlord provided the following documentary evidence for this proceeding: the tenancy agreement; the 10 Day Notice; Proof of Service of the 10 Day Notice; and, the registered mail receipt.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent that is due the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy.

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 Notice.

I accept the evidence before me that the landlord served the tenant with a 10 Day Notice on August 6, 2013. Since the tenant did not pay all of the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on the effective date of August 16, 2013. I am satisfied the landlord did not reinstate the tenancy as it was communicated to the tenant that the landlord was accepting the subsequent rent payments for use and occupancy only.

In light of the above, I grant the landlord's request for an Order of Possession effective November 30, 2013.

Based upon the evidence before me, I find the landlord entitled to recover unpaid and/or loss of rent for two months up to an including the month of November 2013 and I award the landlord \$690.00. I also award the landlord the \$50.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord.

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

Unpaid and/or Loss of Rent (two months)	\$ 690.00
Filing fee	50.00
Less: security deposit	<u>(345.00)</u>
Monetary Order	\$ 395.00

To enforce the Monetary Order the landlord must serve it upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been provided an Order of Possession effective on November 30, 2013. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$395.00 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 14, 2013

Residential Tenancy Branch

