



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order for unpaid rent, and an order to retain the security deposit in partial satisfaction of the claim

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent stated that the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on October 24, 2013, a Canada post tracking number was provided as evidence of service. Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

On October 9, 2013, the parties entered into a mutual agreement to end the tenancy with an effective vacancy date of October 31, 2013. Filed in evidence is a copy of the termination agreement which is signed by the parties.

The landlord's agent testified that the tenant breached the mutual agreement by failing to vacate the residential premise on October 31, 2013.

The landlord's agent testified that they believe the tenant vacated the rental unit on November 6, 2013, and taking the exterior door with them. The landlord's agent stated that they are unsure if the tenant is planning to return and seeks an order of possession.

The landlord's agent testified that in the mutual agreement to end the tenancy the parties agreed that the landlord would retain the tenant's security deposit of \$400.00 to offset rent owed for October 2013, rent (\$800.00), leaving a balance of rent owed of \$400.00.

The landlord's agent stated that the parties had agreed that the balance due of \$400.00 would be paid no later than November 8, 2013. The landlord's agent stated that they are not confident that the tenant will pay the balance of rent due. The landlord seeks a monetary order for unpaid rent in the amount of \$400.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under section 44(1)(c) of the Act, the tenancy ends when the landlord and tenant agree in writing to end the tenancy.

In this case, the parties entered into a written mutual agreement to end the tenancy with an effective vacancy date of October 31, 2013. Therefore, I find the tenancy legally ended on October 31, 2013.

The evidence of the landlord's agent was the tenant breached the mutual agreement to end tenancy, by failing to vacate the residential premises on the date specified in the agreement. The evidence of the landlord's agent was they believe the tenant vacated on November 6, 2013, however, when the tenant vacated the residential premise they took the exterior door and are unsure if the tenant plans to return.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

In this case, the termination agreement filed as evidence by the landlord indicated the parties agreed in writing that the tenant's security deposit of \$400.00 would be applied towards unpaid rent of \$800.00 and the balance of \$400.00 would be paid by the tenant no later than November 8, 2013.

As a result of that agreement, I authorize the landlord to retain the tenant's security deposit to offset rent owed for October 2013, and I grant the landlord a monetary order for the balance due of **\$400.00**. However, the monetary order is not enforceable until after November 8, 2013, should the tenant failed to comply with the signed termination agreement

I find the landlord has established a total monetary claim of **\$450.00** comprised of the above described amount and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession.

The landlord is authorized to retain the security deposit to offset October 2013, rent.

The landlord is granted a monetary order in the above amount should the tenant fail to comply with the termination agreement.

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 08, 2013

Residential Tenancy Branch

