



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 a Monetary Order for unpaid rent; 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 proof the hearing documents were sent to the tenant at the rental unit on September 30, 2013. The landlord also provided the Canada Post tracking information showing the registered mail was successfully delivered on October 10, 2013.

The landlord subsequently amended the Application for Dispute Resolution and testified that the tenant was personally served the amended Application for Dispute Resolution at the rental unit on October 30, 2013 in the presence of a witness. I was satisfied the tenant has been served in a manner that complies with the Act and I continued to hear from the landlord without the tenant present.

It should be noted that during the hearing an unknown person or persons called into the teleconference call on two occasions. The caller(s) did not speak and did not identify themselves despite several requests to do so. Since the caller(s) would not identify themselves I disconnected their call from the teleconference system.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent?
2. Are the landlords entitled to a Monetary Order for unpaid and/or loss of rent?
3. Are the landlords authorized to retain the security deposit?

Background and Evidence

The co-tenancy commenced April 17, 2013 and the landlords collected a security deposit of \$575.00. The co-tenants were required to pay rent of \$1,150.00 on the 1st

day of every month. One of the co-tenants moved out of the rental unit in August 2013 and one co-tenant remained in the unit.

On September 6, 2013 the tenant paid \$230.00 toward the rent for September 2013 and on September 7, 2013 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the door of the rental unit. The Notice indicates rent of \$920.00 was outstanding and has a stated effective date of September 17, 2013. The tenant paid \$640.00 on September 20, 2013. The tenant paid \$500.00 on October 4, 2013 and \$200.00 October 20, 2013. The landlord gave the tenant receipts "for use and occupancy only" for the payments received in October 2013.

The landlord submits that taking into account the payments made by the tenant the landlord has suffered a loss of rent for the month of October 2013 in the amount of \$730.00 plus loss of rent for November 2013 since the tenant still occupies the rental unit. The landlord stated that a prospective tenant is waiting to take the unit once the current tenant vacates. Accordingly, the landlord seeks an Order of Possession as soon as possible.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. In cases of co-tenancies, the co-tenants are jointly and severally liable to pay the monthly rent.

Where a tenant does not pay the rent that is due, the landlord is at liberty to issue 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 Notice.

I accept the evidence before me that the landlord posted a 10 Day Notice to End Tenancy on the door of the rental unit on September 7, 2013. As the 10 Day Notice was posted it is deemed to be received by the tenant three days later. Accordingly, the effective date of the Notice automatically changes to comply with the Act to read September 20, 2013 pursuant to sections 46 and 53 of the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on September 20, 2013. I am also satisfied that the tenant was duly notified by way of the landlord's Application for Dispute Resolution and receipts "for use and occupancy" that the tenancy would not be reinstated upon receipt of the partial payments. Therefore, I find the landlords entitled to regain possession of the rental unit and the landlords are provided an Order of Possession with this decision. The Order of Possession shall be effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlords entitled to loss of rent for the month of October 2013 since the tenant breached the Act by failing to pay rent and move out by the effective date of the Notice. Since the tenant continues to occupy the rental unit and the landlord has a tenant set to move in to the rental unit when the tenant vacates, I find the entitled to loss of rent on a per-diem basis for the month of November 2013. Taking into account the landlord has been provided an Order of Possession effective two days after service I award the landlord loss of rent for November 2013 up until November 9, 2013. Should the landlords suffer further loss of rent or other damages as a result of the tenant's actions the landlords are at liberty to file a subsequent Application for Dispute Resolution.

I authorize the landlords to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlords in this decision. I also award the landlords the filing fee paid for this Application.

In light of the above, the landlords are provided a Monetary Order calculated as follows:

Loss of Rent: October 2013	\$ 730.00
Loss of Rent: November 2013 (per diem to Nov 9)	345.00
Filing fee	50.00
Less: security deposit	<u>(575.00)</u>
Monetary Order	\$ 550.00

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

Conclusion

The landlords have been provided an Order of Possession effective two (2) days after service. The landlords have been authorized to retain the security deposit and have

been provided a Monetary Order for the balance of \$550.00 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 06, 2013

Residential Tenancy Branch

