



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Although served with the Application for Dispute Resolution and Notice of Hearing deemed received on November 24, 2013, the Tenant did not appear.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, upon what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?
- Is the landlord entitled to retain the security deposit?

Background and Evidence

This tenancy commenced November 1, 2012 as a one year fixed term tenancy and has continued thereafter as a month-to-month tenancy. The monthly rent is due on the first day of the month. At the beginning of the tenancy the monthly rent was \$1330.00. As of November 1, 2013 it was increased to \$1350.00. The tenant paid a security deposit of \$665.00.

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Non-Payment of Rent on October 21, 2013, when it was left with an adult occupant of the rental unit. That document includes information advising the tenant that the notice is cancelled if the tenant paid the arrears of rent within five days. It also advises that the tenant has five days to dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

The landlord testified that the tenant made a payment of \$700.00 on October 31 and another payment of \$500.00 on November 1, 2013. On both occasions the tenant was provided with a receipt marked "for use and occupancy only". The landlord testified that the tenant has made no other payments and as of the date of the hearing the arrears of rent totaled \$3205.00.

In addition the written tenancy agreement provides for a \$25.00 late payment fee. The landlord claims the late payment fee for October, November and December.

The landlord also testified that the tenant broke the glass in one of the unit's windows, which has been repaired by the landlord at a cost of \$227.25.

Analysis

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

The Tenant has not paid the outstanding rent in full within the five day period and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Residential Tenancy Act* to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an order of possession effective two days after service on the Tenant.

I find that the landlord has established a total monetary claim of \$3557.25 comprised of arrears of rent in the amount of \$3205.00, late payment fees of \$75.00, damages in the amount of \$227.25, and the \$50.00 fee paid by the landlord for this application. I order that the Landlord retain the deposit of \$665.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$2892.25.

Conclusion

- a. An order of possession effective two days after service on the Tenant has been granted. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- b. A monetary order in favour of the landlord in the amount of \$2892.25 has been granted. If necessary, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: December 03, 2013

Residential Tenancy Branch

