



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on October 24, 2013. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover rent owed and late fees?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This fixed term tenancy started on January 01, 2013. Rent for this unit is \$625.00 per month and is due on the first of each month. The tenant paid a security deposit of \$375.00 on November 26, 2012.

The landlord's agent testifies that the tenant failed to pay rent for October, 2013. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on October 03, 2013. This was posted to the tenant's door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on October 17, 2013. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has failed to pay rent for November, 2013. The total amount of unpaid rent is now \$1,250.00.

The landlord testifies that the tenant has not been seen at the unit recently but an inspection of the unit, after Notice for entry was posted, determined that the tenant's belongings are still in the unit and the tenant still has possession of the unit.

The landlord's agent testifies that there is a clause in the tenancy agreement that states the landlord will charge the tenant \$25.00 for each month rent is late. The landlord seeks to recover \$50.00 in late fees for October and November, 2013

The landlord has applied to retain the tenant's security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I am satisfied that there is outstanding rent for October and November, 2013 and the tenant remains in

possession of the rental unit. Consequently, the landlord is entitled to recover rent arrears of **\$1,250.00**.

I further find the landlord is entitled to recover **\$50.00** in late fees for October and November, 2013.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$375.00 in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent for December, 2009, January February and March, 2010	\$1,250.00
Late fees for two months	\$50.00
Filing fee	\$50.00
Less security deposit	(-\$375.00)
Total amount due to the landlord	\$975.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door it was deemed served three days after posting. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession for two days after service upon the tenant pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$975.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court 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*.

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Dated: December 04, 2013

Residential Tenancy Branch

