



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANNE WHEELER INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; and, authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to monetary compensation for unpaid rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced September 1, 2012 and the tenant paid a security deposit of \$700.00. Under the tenancy agreement, the tenant was required to pay rent of \$1,395.00 on the 1st day of every month.

In August 2013 the tenant requested the day rent was due be changed to the 15th of every month. The landlord was agreeable to this change. Both parties indicated they wanted to sign a new tenancy agreement to reflect this change. The landlord claimed that the new tenancy agreement was sent to the tenant for her signature but that it was not returned by the tenant. The tenant claimed that she never received a new tenancy agreement from the landlord despite requests for one to be sent to her.

It was undisputed that the tenant paid rent on September 15, 2013 and has not paid rent since. The tenant submitted that she was unable to pay rent that was due in October and subsequent months due to personal and financial circumstances.

On December 9, 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 \$4,185.00 was outstanding as of December 1, 2013.

The landlord's agent submitted that since a new tenancy agreement was not executed the monthly rent of \$1,395.00 remained payable on the 1st day of the month. As such, the 10 Day Notice reflects three months of outstanding rent as of December 1, 2013.

The tenant did not pay the outstanding rent or file an Application to dispute the Notice. However, the tenant made several promises to pay and excuses for not paying the rent.

The tenant claimed that she will have the outstanding rent tomorrow and wishes to continue the tenancy. The landlord was not agreeable to continuing with the tenancy.

The tenant raised an issue with respect to the landlord changing the locks to the rental unit in November 2013. The tenant claimed the unit was unaccessable by her for one week. The landlord's agent submitted that one day after the tenant contacted the landlord a new key was provided to the building manager to give to the tenant.

Analysis

Upon review of the tenancy agreement provided as evidence, I note the tenancy agreement does not provide that the tenant is required to vacate the rental unit at the expiration of the fixed term. Rather, the tenancy agreement merely indicates the tenancy agreement is "renewable". The Act provides that if a tenancy agreement does not require a tenant to vacate the rental unit at the end of the fixed term, and the parties have not entered into a new tenancy agreement, the parties are deemed to have renewed the tenancy on a month-to-month basis with the same terms. In this case, I find the tenancy continued on a month to month basis, with the same terms, since the parties did not execute a new tenancy agreement.

I find that rent was payable by the tenant on the 1st day of the month in the absence of an amendment to the tenancy agreement that complies with the requirements of the Act, or an executed tenancy agreement that replaces the original one. Therefore, I accept that the 10 Day Notice issued in December 2013 correctly reflects the amount of outstanding rent as of December 1, 2013.

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement even if a landlord violates the Act, regulations or tenancy

agreement, unless the tenant has a legal right to withhold rent as provided under the Act.

Although changing the locks to the rental unit may have been in violation of the Act by the landlord, such a violation would not form a basis for withholding rent in the absence of prior authorization of an Arbitrator to do so. The tenant did not file an Application for Dispute Resolution with respect to this incident or obtain authorization to withhold rent; however, as the tenant was informed during the hearing, she remains at liberty to seek compensation for her losses she suffered by filing her own Application for Dispute Resolution.

Where a tenant does not pay rent 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 tenant received the 10 Day Notice that was posted to her door on December 9, 2013. Since it was posted it is deemed to be received by the tenant three days later under section 90 of the Act. Therefore, I find the stated effective date of December 24, 2013 is compliant with 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 December 24, 2013 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for the months of October 2013 through December 2013 in the amount of \$4,185.00 as claimed. The landlord remains at liberty to file a subsequent application for any further damages or loss that may be incurred as a result of the actions of the tenant.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

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

Rent: October through December 2013	\$ 4,185.00
Filing fee	50.00
Less: security deposit	<u>(700.00)</u>
Monetary Order	\$ 3,535.00

The landlord must serve the Monetary Order 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 two days after service upon the tenant. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$3,535.00 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: January 15, 2014

Residential Tenancy Branch

