



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with cross applications. The tenant applied to cancel Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order unpaid and/or loss of rent. The landlords appeared at the hearing but the tenant did not. The landlord stated that the tenant has since vacated the rental unit.

Since the tenant failed to appear at the scheduled hearing, I dismissed her application without leave.

With respect to the landlord's application, the landlord submitted evidence that it was sent to the tenant via registered mail which the tenant received. The landlord provided the Canada Post tracking information as proof of service, showing the tenant signed for the registered mail on November 20, 2013. I was satisfied the tenant was served with notification of the landlord's claims and I continued to hear from the landlord without the tenant present.

As the landlord has since regained possession of the rental unit an Order of Possession is no longer necessary and I do not provide one with this decision.

The landlord requested the application be amended to include authorization to retain the tenant's security deposit in partial satisfaction of the unpaid rent. As this request would reduce any Monetary Order given to the landlord, I amended the application accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent in the amount claimed?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The one-year fixed term tenancy commenced February 1, 2013 and the tenant paid a security deposit of \$875.00. The tenant was required to pay rent of \$1,750.00 on the 1st day of every month. The tenant's rent cheque for November 2013 was dishonoured and on November 8, 2013 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) with an effective date of November 18, 2013. The tenant did not pay the outstanding rent, or any rent for December 2013 and continued to reside in the rental unit through to December 20, 2013. An occupant the tenant permitted on the property continued to occupy the rental unit until December 31, 2013.

The rental unit was left in poor condition, necessitating the landlord to commence clean-up efforts so that the unit can be shown to prospective tenants. The landlord finished clean-up efforts the day before this hearing. As of the date of this hearing the landlord has not yet re-rented the unit and did not have any prospects for replacement tenants for the remainder of the month.

The landlord is seeking to recover unpaid and/or loss of rent for the months of November 2013, December 2013 and January 2014.

Analysis

Based upon everything presented to me, I am satisfied the tenant breached the tenancy agreement and the Act by failing to pay rent that was due to the landlord and ending the tenancy prior to expiration of the fixed term. Therefore, I find the landlord entitled to unpaid and/or loss of rent for the months of November and December 2013.

In addition, since the tenant continued to occupy the rental unit through December 2013 despite not paying rent, receiving a 10 Day Notice, and not giving the landlord any notice as to when she would be vacating the rental unit, I am satisfied the tenant's actions caused the landlord to suffer a further loss of rent for the month of January 2014.

In light of the above, I grant the landlord's claim in its entirety. I further award the landlord recovery of the filing fee and authorize the landlord to retain the security deposit in partial satisfaction of the unpaid rent. Accordingly, I provide the landlord with a Monetary Order calculated as follows:

Unpaid/Loss of Rent (Nov 2013 – Jan 2014)	\$ 5,250.00
Filing fee	100.00
Less: security deposit	<u>(875.00)</u>
Monetary Order	\$ 4,475.00

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$4,475.00 to serve upon the tenant and enforce as necessary.

The tenant's application was dismissed and since the landlord has since regained possession of the rental unit an order of Possession was not provided with this decision.

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 24, 2014

Residential Tenancy Branch

