



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' 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 landlords to the tenant, was done in accordance with section 89 of the *Act*, served by registered mail on January 23, 2014. Canada Post tracking numbers were provided by the landlords 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*.

One of the landlords appeared, gave sworn testimony, was provided the opportunity to present 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*.

Preliminary Issues

The landlord testifies that there is one tenant who goes by two different variations of her first name. The landlord is unsure which is the tenants legal first name so has included both names on this application.

Issues(s) to be Decided

- Are the landlords entitled to an Order of Possession due to unpaid rent?
- Are the landlords entitled to a monetary Order to recover rent owed?
- Are the landlords entitled to keep the security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that this fixed term tenancy started on May 01, 2007 for one year. The tenancy then reverted to a month to month tenancy. Rent for this unit is \$1,100.00 per month and is due on the first of each month. The tenant paid a security deposit of \$550.00 on May 01, 2007. The tenant resides in the unit with a roommate.

The landlord testifies that the tenant failed to pay all the rent owed for November, 2013 leaving an unpaid balance of \$400.00. The tenant failed to pay rent for December, 2013 and January, 2014. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent on January 12, 2014. This was served in person to the tenant's roommate. The Notice indicated that the tenant owed rent of \$2,600.00 that was due on January 01, 2014. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on January 22, 2014. The tenant did not pay the outstanding rent or dispute the Notice within five days. On January 17, 2014 the tenant did drop a cheque off in the landlords mailbox but when the landlord attempted to cash this cheque the landlord was informed that there were insufficient funds available. The landlord tried to deposit the cheque again a few days later, as instructed by the tenant, however insufficient funds were available again. Since that time the tenant has failed to pay rent for February, 2014. The total amount of unpaid rent is now \$3,700.00.

The landlord testifies that there is no further monetary claim for money owed or compensation for damage or loss.

The landlords have applied to retain the tenant's security deposit in partial payment towards the rent arrears. The landlords seek a Monetary Order for the balance owing and the \$50.00 filing fee. The landlords have 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 November and December, 2013 and January and February, 2014. Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Consequently, it is my decision that the landlord has established a claim for unpaid rent and is entitled to recover rent arrears of **\$3,700.00**.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$550.00** and accrued interest on this amount of **\$13.88**, 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 | \$3,700.00 |
| Filing fee | \$50.00 |
| Less security deposit and accrued interest | (-\$563.88) |
| Total amount due to the landlord | \$3,186.12 |

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. 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 landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$3,186.12**. 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 landlords 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*.

Dated: February 13, 2014

Residential Tenancy Branch

