



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jober Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, 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 or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord was permitted to provide additional evidence after the hearing had concluded. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(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 unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The parties agree that this tenancy started on June 01, 2012 for an initial fixed term for one year. The tenancy has since reverted to a month to month tenancy. Rent for this unit is \$900.00 per month. Rent is due on the first of each month. The tenant paid a security deposit of \$450.00 on June 01, 2012.

The landlord testifies that the tenant failed to pay all the rent for January, February, March, May, June, July, September, November, and December 2013 and January and February, 2014. The total amount of outstanding rent is now \$8,600.00. The landlord testifies that they have limited their claim to \$5,000.00.

The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on December 10, 2013. This was served in person to the tenant on December 13, 2013. This Notice states that the tenant owes rent of \$6,525.00 that was due on December 01, 2013. The

tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 20, 2013. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has also failed to pay rent for January and February of \$1,800.00. The landlord testifies that previous 10 Day Notices had been served upon the tenant but the landlord did not follow through with those. The landlord testifies that he can no longer afford to keep the tenant in this unit.

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 within two days of service and a Monetary Order for the outstanding rent and filing fee.

The tenant does not dispute the landlord's claim that rent is owed of \$8,600.00. The tenant testifies that she had applied for a disability pension as the tenant is in a wheel chair but this did not come through. The tenant also applied for income support but that has not come through yet either. The tenant testifies that the disability pension people told the tenant that they would back pay the rent but as there was a dispute on the claim they have cut off the tenant's allowance. The tenant requests more time to move.

The landlord testifies that he has given the tenant long enough to pay the rent arrears and the tenant knew she had to vacate the unit on December, 20, 2013 so the landlord cannot now provide anymore time.

Analysis

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 I am satisfied with the undisputed evidence before me that the tenant has failed to pay rent for 2013 to an amount of \$6,800.00 and for 2014 of \$1,800.00. As the landlord has limited their claim to **\$5,000.00** I find the landlord is entitled to a monetary award for this amount pursuant to s.67 of the Act.

I order the landlord pursuant to s. 38(4)(b) of the Act to keep the tenant's security deposit of **\$450.00** in partial payment of the rent arrears claimed. As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the Act. The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding claim for rent	\$5,000.00
Less Security Deposit	(-\$450.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$4,600.00

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy pursuant to section 88 of the *Residential Tenancy Act*. The notice is deemed to have been received by the tenant on December 13, 2013 and the effective date of the Notice is amended to December 23, 2013 pursuant to section 53 of the *Act*. The Notice states that the tenant has 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 applied 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 and grant the landlord an order of possession pursuant to section 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 **\$4,600.00**. 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 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 24, 2014

Residential Tenancy Branch

