



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing.

The landlord provided evidence that the hearing package was sent to the tenant at the rental unit via registered mail on January 31, 2014 and the registered mail was unclaimed despite two notice cards being left for the tenant by Canada Post. The landlord's agent confirmed that the tenant is still residing at the rental unit. Section 90 of the Act deems a person to be served with documents five days after mailing so that a person cannot avoid service by refusing to accept or pick up their mail.

Based upon the above, I found the tenant to be deemed served with the landlord's hearing package and I continued to hear from the landlord's agent without the tenant present.

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the one year fixed term tenancy commenced July 1, 2012 and the tenant paid a security deposit of \$750.00. The monthly rent of \$1,450.00 was payable on the 1st day of every month. At the end of the fixed term, the parties agreed "the tenancy may continue on a one year renewal". I was not provided any other documentation indicating the parties agreed to another one year fixed term

and the tenant remained in possession of the rental unit, paying rent for the months of July 2013 and August 2013.

The parties communicated with respect to the possibility of the tenant purchasing the property but a sale did not complete. The landlord's agent confirmed that the tenant had no greater interest in the property other than that of a tenant.

The tenant failed to pay rent for the months of September 2013 through December 2013. I heard the landlord attempted to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on December 30, 2013; however, the landlord neglected to serve both pages of the Notice to the tenant. The landlord proceeded to issue another 10 Day Notice to End Tenancy for Unpaid Rent on December 31, 2013 indicating rent of \$5,800.00 was outstanding as of December 31, 2013 and an effective date of January 18, 2014. Both pages of the 10 Day Notice dated December 31, 2013 was posted on the door of the rental unit on January 7, 2014. The tenant did not file to dispute the 10 Day Notice and did not pay the outstanding rent.

The landlord's agent testified that on February 25, 2014 the tenant paid \$1,000.00 to the landlord and paid an outstanding water bill in exchange for use and occupancy of the unit until March 31, 2014. The landlord seeks to reduce the monetary claim by \$1,000 to reflect this partial payment.

In light of the above, the landlord is requesting an Order of Possession effective March 31, 2014 and a Monetary Order for the reduced amount of \$8,400.00 [calculated as unpaid and/or loss of rent for September 2013 through to March 2014; less: the payment of \$1,000.00 and the security deposit of \$750.00].

Documentary evidence provided for this proceeding included a copy of: the application for tenancy; the tenancy agreement; the 10 Day Notice dated December 31, 2013; water bills; as well as proof of service for the 10 Day Notice and the hearing package.

Analysis

The Act provides that if a tenant is not required to vacate a rental unit at the end of the fixed term, the tenancy is deemed to continue on a month-to-month basis unless the parties agree to another fixed term. In the absence of any documentary evidence that the parties entered into another fixed term tenancy, I find this tenancy continued on a month to month basis following the expiry of the fixed term.

I am also satisfied by the undisputed evidence and submissions before me, that the tenant does not have a greater interest in the property other than that of a tenant and that I have jurisdiction to resolve this dispute.

As a tenant, the tenant had an obligation under the Act to pay the rent that was due to the landlord. I am satisfied that the tenant failed to do so starting September 1, 2013.

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 both pages of a 10 Day Notice to End Tenancy for Unpaid Rent was posted to the door of the rental unit on January 7, 2014. As such, it is deemed to be received by the tenant three days later under section 90 of the Act. Accordingly, the effective date of the Notice automatically changes to comply with the Act and reads January 20, 2014 pursuant to sections 46 and 53.

Since the tenant did not pay all of the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on January 20, 2014 and the landlord is entitled to regain possession of the rental unit. Since the landlord has accepted \$1,000.00 from the tenant in exchange for use and occupancy until March 31, 2014 I provided to the landlord an Order of Possession effective at 1:00 p.m. on March 31, 2014.

Upon review the evidence before me, I find the landlord entitled to recover \$9,150.00 from the tenant for unpaid and/or loss of rent for the months of September 2013 through March 31, 2014 after deducting the \$1,000.00 payment made on February 25, 2014.

I also authorize the landlord to retain the security deposit of \$750.00 in partial satisfaction of the unpaid rent and I award the landlord recovery of the \$100.00 filing fee paid for this application.

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

Rent: September 2013 through March 2014	\$ 9,150.00
Filing fee	100.00
Less: security deposit	<u>(750.00)</u>
Monetary Order	\$ 8,500.00

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 provided an Order of Possession effective at 1:00 p.m. on March 31, 2014. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$8,500.00 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: March 18, 2014

Residential Tenancy Branch

