



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 was scheduled to deal with cross applications by way of a teleconference call. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the security deposit. The landlord appeared at the hearing but the tenant did not, despite leaving the teleconference call open for over 20 minutes.

The landlord confirmed that he was served with the tenant's application. Since the tenant did not appear at the hearing, and the landlord was prepared to deal with the tenant's application, I dismissed the tenant's application without leave.

The landlord testified that on February 25, 2014 he slid the landlord's hearing package under the tenant's door since the tenant would not open his door. The landlord also testified that on February 26, 2014 the landlord and tenant spoke and the tenant confirmed receiving the landlord's hearing package. Although sliding documents under the door of a rental unit does not comply with service requirements of section 89 of the Act, I was satisfied the tenant received the landlord's hearing package and I deemed the tenant sufficiently served under section 71 of the Act.

The landlord testified that the tenant agreed to vacate the rental unit this morning; however, the landlord requested an Order of Possession in the event that does not happen.

The landlord also testified that the landlord received rent for the month of March 2014 from Income Assistance and he cashed the cheque but gave the money to the tenant. The landlord requested his monetary claim be decreased so as to reflect pro-rated rent for the month of March 2014 rather than the full amount of rent originally claimed. As the landlord requested a reduced monetary award I found it to be to the tenant's benefit and I permitted the amendment.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to unpaid and/or loss of rent, as amended?

Background and Evidence

Pursuant to a verbal agreement, the tenancy commenced in October 2013 and the landlord received a security deposit of \$200.00. The tenant was required to pay rent of \$400.00 on the 1st day of every month.

The tenant withheld \$200.00 from his January 2014 rent. On January 16, 2014 the landlord personally served the tenant with both pages of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates rent of \$200.00 was outstanding as of January 1, 2014 and has a stated effective date of January 26, 2014. The tenant did not pay the outstanding rent but filed to dispute it. As indicated above, the tenant's application to cancel the Notice has been dismissed.

The landlord is seeking to recover the unpaid rent for January 2014, plus loss of rent from February 1, 2014 through to March 5, 2014 since the tenant has had the benefit of occupying the rental unit to this day.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right to withhold rent. By definition, a tenancy agreement includes an oral agreement. I was not presented any evidence to suggest the tenant had a legal right to withhold rent.

Where a tenant does not pay rent that is due, the landlord is at liberty to serve the tenant with 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.

In this case, I accept that the tenant was served with a 10 Day Notice as submitted by the landlord; yet, the tenant did not pay the outstanding rent and the tenant's request to

cancel the Notice has been dismissed. Therefore, I uphold the Notice and find the tenancy legally ended on January 26, 2014 -- the effective date stated on the Notice.

As the tenancy has ended, I find the landlord entitled to regain possession of the rental unit. In the event the tenant does not vacate the unit today, as agreed, I provide the landlord an Order of Possession to serve and enforce as necessary. With this decision I provide to the landlord an Order of Possession effective two (2) days after service upon the tenant.

I accept the evidence before me that the landlord is entitled to recover unpaid rent of \$200.00 for the month of January 2014. I further find that the tenant has benefited from use of the rental unit up to today's date and I find the landlord entitled to recover overholding for the days of February 1, 2014 – March 5, 2014. I calculate overholding for this period to be \$464.52 [\$400.00 for February 2014 plus \$64.52 for five days in March 2014].

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:

Unpaid Rent: January 2014	\$ 200.00
Loss of Rent: February 1 – March 5, 2014	464.52
Filing fee	50.00
Less: security deposit	<u>(200.00)</u>
Monetary Order	\$ 514.52

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 tenant's application has been dismissed without leave.

The landlord has been provided an Order of Possession effective two (2) days after service. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$514.52 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 05, 2014

Residential Tenancy Branch

