



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Solaris Investments and Coldwell Banker Horizon Realty
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 and utilities; for a Monetary Order for unpaid rent and 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.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 09, 2014. Mail receipt numbers were provided in the landlords' 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*.

The landlord 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*. All of the testimony and documentary evidence was carefully considered.

Issues to be decided

- Is the landlord entitled to an Order of Possession due to unpaid rent and utilities?
- Is the landlord entitled to a monetary Order to recover unpaid rent and utilities?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This fixed term tenancy started on April 01, 2013 and is due to end on March 31, 2014. Rent for this unit is \$1,450.00 per month plus \$225.00 per month for utilities. Rent and utilities are due on the 1st of each month. The tenant paid a security deposit of \$725.00 on March 22, 2013.

The landlord testifies that the tenant owed an amount of rent and utilities from 2013 of \$745.00. On January 01, 2014 the tenant failed to pay the rent and utilities owed. This left an outstanding balance of \$2,420.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 07, 2014. This was served to the tenant in person on that date. This Notice states that the tenant owes rent of \$2,420.00 which was due on January 01, 2014. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on January 17, 2014. The tenant did not pay the outstanding rent or dispute the Notice within five days. The landlord testifies that the tenant failed to vacate the rental unit on the effective date of the Notice and continues to reside in the rental unit. The landlord testifies that the tenant did make a payment of \$1,450 on January 15, 2014 leaving an unpaid balance of \$970.00. The tenant failed to pay February's rent on the day it was due making rent arrears on February 01, 2014 of \$2,645.00. The tenant paid a further \$2,000.00 on February 12, 2014 leaving a balance due of \$645.00. The tenant paid rent and utilities for March of \$1,675.00 on March 24, 2014. The landlord seeks to recover the unpaid rent and utilities of \$645.00..

The landlord requests an Order to retain part of the tenant's security deposit satisfaction of the rent and utilities owed. The landlord also requests to recover the \$50.00 filing fee from the tenant. The landlord requests an Order of Possession to take effect as soon as possible.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. 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 and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

With regard to the landlords revised claim for a Monetary Order for unpaid rent and utilities. 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 from the evidence before me that the tenant failed to pay all the outstanding rent within five days of receiving the 10 Day Notice and now continues to owe an amount of **\$645.00**. Consequently, the landlord has established a claim to recover this amount from the tenant. As the landlord has been successful with their revised claim, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep part of the tenant's security deposit of **\$695.00** in payment of the rent and utility arrears and the filing fee. The balance of \$30.00 must either be returned to the tenant or dealt with under s. 38 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim for \$695.00. As the claim is satisfied with the security deposit then no Monetary Orders are required

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service upon 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: March 27, 2014

Residential Tenancy Branch

