



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LU'MA NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, loss of rent and authorization to retain the security deposit. The named tenants did not appear at the hearing. The landlord provided registered mail receipts, including tracking numbers, as proof the hearing documents were sent to the respondents at the rental unit on March 4, 2014. The landlord confirmed that the respondents are still occupying the rental unit.

Preliminary Issue

I noted that the written tenancy agreement executed in May 2002 names only one tenant: the male tenant named in this Application. The landlord explained that the female tenant has been residing in the rental unit for several years and has completed Rental Subsidy applications for the rental unit; however, a written tenancy agreement was not signed by the female occupant.

It is clear from the written tenancy agreement presented to me that there is only one tenant with privity of contract. I was not provided evidence to show the tenancy agreement was amended to add the adult female as a tenant. Nor was I provided evidence to suggest that the original tenancy agreement came to an end and a new tenancy formed. I cannot hold another party responsible for the paying rent payable by the tenant under the terms of tenancy. Accordingly, I have amended the Application to exclude the named female respondent; although, it should be noted that the Order of Possession shall require the tenant and all other occupants to vacate the rental unit.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order?
3. Is the landlord authorized to retain the security deposit and interest?

Background and Evidence

The tenancy commenced June 1, 2002 and the tenant paid a security deposit of \$358.00 on March 31, 2002. The tenancy agreement provides that the tenant is required to pay "market rent" for the unit unless the tenant applies for and receives a rental subsidy. The landlord submitted that the current market rent for the rental unit is \$861.00 per month, payable on the 1st day of every month.

The last rental subsidy expired in November 2013 and starting on December 1, 2013 market rent of \$861.00 became payable. Rent was not paid for the month of December 2013, January 2014 or February 2014 and on February 18, 2014 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the door of the rental unit. The Notice indicates rent of \$3,029.32 was outstanding as of February 1, 2014 and has a stated effective date of February 28, 2014. None of the outstanding rent was paid after posting the 10 Day Notice and the tenant did not file to dispute the Notice. Nor, has any rent been received for the months of March 2014 and April 2014 yet the rental unit is still occupied.

The landlord explained that the amount appearing on the 10 Day Notice includes rental arrears that originated years earlier. The landlord's agent indicated that the landlord would be satisfied with a Monetary Order for unpaid and/or loss of rent for December 2013 onwards.

Included in the landlord's documentary evidence were copies of: the tenancy agreement; the 10 Day Notice; the tenant's ledger; correspondence regarding application for rental subsidy; and registered mail receipts.

Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent.

Upon receipt of 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 the landlord posted a 10 Day Notice to End Tenancy on the door of the rental unit on February 18, 2014. As the 10 Day Notice was posted on the rental unit door it is deemed to be received by the tenant three days later. Accordingly, the effective date of the Notice automatically changes to comply with the Act and reads March 3, 2014 pursuant to sections 46, 53 and 90 of the Act

Since the outstanding rent was not paid and the Notice was not disputed within five days of receiving the Notice I find the tenancy ended on March 3, 2014 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant. The Order of Possession may be served upon the tenant in any manner that complies with section 88 of the Act including: posting it on the door of the rental unit or giving it to an adult person who resides with the tenant.

Based upon the evidence before me, I am satisfied the landlord entitled to recover unpaid and/or loss of rent for the months of December 2013 through April 2014 as requested. I also award the landlord the filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit and interest in partial satisfaction of the rent owed the landlord. I calculate the interest on the security deposit to be \$12.69.

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

Rent: December 2013 through April 2014	\$ 4,305.00
Filing fee	50.00
Less: security deposit and interest	<u>(370.69)</u>
Monetary Order	\$ 3,984.31

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service. The landlord has been authorized to retain the security deposit and interest and has been provided a Monetary Order for the balance of \$3,984.31 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: April 23, 2014

Residential Tenancy Branch

