



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*; the landlord's agent gave sworn testimony that the tenant was served in person on February 13, 2014.

One of the landlords 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*.

Issues(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 rent owed?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that this month to month tenancy started on January 01, 2014. Rent for this unit is \$850.00 per month and is due on the first of each month. The tenant paid a security deposit of \$425.00 on or about December 26, 2013.

The landlord testifies that the tenant failed to pay rent on February 01, 2014. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent on February 02, 2014.

This was posted to the tenant's door and was deemed to have been served three days after posting. The Notice informed the tenant that they had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on February 11, 2014. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has failed to pay rent for March, 2014 of \$850 and April, 2014 of \$850.00. The total amount of unpaid rent is now \$2,550.00 and the landlord has applied for a Monetary Order to recover this rent.

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 as soon as possible.

Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I am satisfied that there is outstanding rent for February and March, 2014. Consequently, it is my decision that the landlord is entitled to recover rent arrears of **\$1,700.00**.

With regard to the landlords claim for a loss of rent for April, 2014; as this hearing was conducted at the start of April, the landlords may still be able to re-rent the unit for part of April. Consequently I must limit the landlords claim for a loss of rent for April to half a month's rent of **\$425.00**. If the landlords are unable to re-rent the unit for the remainder of April the landlords are at liberty to reapply for the balance of April's rent.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$425.00** in partial payment of the rent arrears.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlords will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$1,700.00
Loss of rent for first half of April	\$425.00
Filing fee	\$50.00
Less security deposit	(-\$425.00)
Total amount due to the landlord	\$1,750.00

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. As this Notice was posted to the tenant's door it was deemed served three days after posting on February 05, 2014 the effective date of the Notice is therefore amended to

February 15, 2014 pursuant to s. 53 of the *Act*. 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. As this date has since passed I grant the landlords an Order of Possession for two days after service upon the tenant pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,750.00**. 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: April 02, 2014

Residential Tenancy Branch

