



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 landlord's 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; and to recover the filing fee from the tenant for the cost of this application. The landlord withdrew their claim for a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (act), regulations or tenancy agreement during the hearing.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served in person to the tenant March 18, 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*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep the tenants security deposit?

Background and Evidence

The landlord testifies that this month to month tenancy started on December 08, 2013. Rent for this unit is \$800.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$400.00 on December 08, 2013.

The landlord testifies that the tenant had a roommate living with her in the unit and this roommate moved out on February 07, 2014 leaving the tenant responsible for all the rent. The tenant failed to pay all the rent for February, 2014 leaving an unpaid balance of \$675.00. The tenant also failed to pay all the rent for March, 2014 leaving an unpaid balance of \$700.00. The landlord testifies that a 10 Day Notice to End Tenancy (the Notice) was issued to the tenant on February 04, 2014 in person. The landlord has provided a copy of the Notice in evidence and the Notice has an effective date of February 13, 2014. Since the Notice was served the tenant has failed to pay the outstanding rent and has failed to pay rent for April and May of \$1,600.00. The total amount of outstanding rent is now \$2,975.00.

The landlord seeks an Order to keep the security deposit of \$400.00 to offset against the unpaid rent. The landlord also seeks a Monetary Order for the balance of rent and the \$50.00 late fee. The landlord has verbally requested to amend their application to include unpaid rent for May, 2014 of \$800.00 as the tenant continues to reside in the rental unit and has not paid rent for May.

The landlord requests an Order of Possession effective within two days of service to the tenant.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the

tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me. 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.

I am satisfied with the undisputed evidence before me that the tenant has failed to pay the full rent owed for February, March, April and May, 2014. I will allow the landlord to amend the application to include unpaid rent for May as the tenant has continued to have possession of the rental unit and would be aware that rent was due on the first day of May. Therefore the landlord is entitled to recover rent arrears to the sum of **\$2,975.00**.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$400.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order pursuant to s.67 of the *Act* for the balance owing as follows:

Outstanding rent	\$2,975.00
Less Security Deposit	(-\$400.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$2,625.00

I have reviewed all documentary evidence and accept that the tenant has been served with Notice to End Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenant on February 04, 2014 therefore

the effective date of the Notice is amended to February 14, 2014 pursuant to s. 53 of the *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 all 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 amended effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,625.00**. The Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order 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: May 06, 2014

Residential Tenancy Branch

