Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR, MNR, MNSD, MNDC, CNR, MNDC, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and for monetary compensation for damage or loss under the Act, regulations or tenancy agreement. 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 25 minutes.

The landlord confirmed that he received the tenant's Application for Dispute Resolution and was prepared to deal with the tenant's claims. Since the tenant did not appear at the scheduled hearing and the landlord did, I dismissed the tenant's Application for Dispute Resolution without leave.

The landlord testified that he served his hearing documents upon the tenant by sending them registered mail to the rental unit on May 8, 2014. The landlord provided a registered mail tracking number as proof of service. A search of the registered mail tracking number showed that Canada Post made two attempts to deliver the registered mail and despite leaving notice cards, the registered mail went unclaimed.   Pursuant to section 90 of the Act, I found that the tenant was deemed to have received the landlord's hearing documents five days after mailing and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The month to month tenancy commenced February 15, 2014 and the tenant paid a security deposit of $575.00. The tenant was required to pay rent of $1,150.00 on the 15th day of every month. The tenant failed to pay rent that was due April 15, 2014 and on April 22, 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 $1,150.00 was outstanding as of April 15, 2014 and has a stated effective date of May 5, 2014.

The tenant did not pay the outstanding rent and filed to dispute the 10 Day Notice. The tenant's application to cancel the 10 Day Notice has been dismissed for reasons given previously in this decision.

The landlord stated the tenant has not yet returned possession of the unit to him.

In addition to an Order of Possession, the landlord is seeking monetary compensation for unpaid rent due April 15, 2014 as well as loss of rent that would have been payable May 15, 2014 and June 15, 2014.

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.

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.

I accept the evidence before me that the landlord posted a 10 Day Notice to End Tenancy on April 22, 2014. Since the tenant did not pay the outstanding rent and the tenant's application to cancel the 10 Day Notice was dismissed I uphold the 10 Day Notice and find that this tenancy has ended for unpaid rent on the stated effective date of May 5, 2014. Therefore, I find the landlord entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent that was due April 15, 2014. I also accept that the tenant has not returned possession of the unit to the landlord and given the date of this decision I further ward the landlord loss of rent for the period of May 15, 2014 – June 30, 2014. The landlord's request for loss of rent for the period of July 1 – 14, 2014 is dismissed with leave to reapply.

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: April 15 – May 14, 2014	$ 1,150.00
Loss of Rent: May 15 – June 30, 2014	1,725.00
Filing fee	50.00
Less: security deposit	(575.00)

Monetary Order $ 2,350.00

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

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 upon the tenant. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of $2,350.00 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: June 18, 2014

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Residential Tenancy Branch