



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent or utilities. The Landlord also applied for: money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; the retaining of the Tenant's security deposit; and to recover the filing fee from the Tenant for the cost of making the Application.

Two agents for the Landlord and the Tenant appeared for the hearing and provided affirmed testimony during the hearing. The Tenant confirmed receipt of the Landlord's Application and written evidence prior to the hearing. The Tenant did not submit any written evidence in advance of the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim for unpaid rent?

Background and Evidence

Both parties agreed that this tenancy started on October 1, 2012 on a month to month basis. A written tenancy agreement was completed and the Tenant paid a \$375.00 security deposit on October 5, 2012; no interest is payable on this amount. Under the

tenancy agreement the Tenant is responsible to pay rent in the amount of \$750.00 on the first day of each month.

The first Landlord's agent testified that the Tenant had failed to pay rent in the amount of \$100.00 for April, 2014. The Tenant then failed to pay full rent in the amount of \$750.00 on May 1, 2014.

As a result, the Landlord served the Tenant with a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), on May 5, 2014 by attaching it to the Tenant's door. The Notice was provided as evidence and shows an expected date of vacancy of May 15, 2014, due to \$850.00 in unpaid rent due on May 1, 2014.

The Landlord's agent testified that after the Notice was issued, the Tenant also failed to pay rent for June and July, 2014 in the amount of \$750.00 each. The Landlord's agent testified that they do not have any renters for the August, 2014 period as they will need time to get the Tenant out, clean the rental suite and get it back on the market for rent. As a result, the Landlord also seeks the loss of rent for August, 2014.

The Tenant confirmed receipt of the Notice on May 5, 2014 and testified that the amount of rent outstanding for May, June and July, 2014 had indeed not been paid. The Tenant testified that she intended to leave the rental suite by the end of the month and planned on paying her rental debts to the Landlord once she has the funds to do so. However, the Landlord's agent made it clear during the hearing that the Landlord is not willing to continue the tenancy and seeks an Order of Possession for the rental suite based on this unpaid rent.

Analysis

Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act. Section 46(4) and (5) of the Act states that within five days of a Tenant receiving a Notice, the Tenant must pay the overdue rent or make an Application to dispute the Notice; if the Tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

The Tenant confirmed receipt of the Notice on May 5, 2014 and had until May 10, 2014 to pay **all** the overdue rent or make an Application to dispute the Notice, as required by the Act and the instructions given to the Tenant on the Notice. However, the Tenant did neither. As a result, I find that the Tenant is conclusively presumed to have accepted

that the tenancy ended on the effective date of the Notice and therefore, the Landlord is entitled to an Order of Possession.

The Landlord is also granted a Monetary Order for unpaid rent in the amount of \$100.00 for April, 2014 and \$750.00 each for May, June and July, 2014, for a total amount of **\$2,350.00**.

In relation to the Landlord's claim for loss of rent for August, 2014, Policy Guideline 3 to the Act, states "In a month to month tenancy, if the tenancy is ended by the Landlord for non payment of rent, the Landlord may recover any loss of rent suffered for the next month as a notice given by the Tenant during the month would not end the tenancy until the subsequent month." As a result, I also award the Landlord loss of rent for August, 2014. Therefore the total amount awarded to the Landlord in unpaid rent is **\$3,100.00**.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$3,150.00. As the Landlord already holds the Tenant's **\$375.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded **\$2,775.00** in unpaid rent.

Conclusion

As the effective date on the Notice has passed, I grant the Landlord an Order of Possession effective **2 days after service on the Tenant** for the above reasons. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$2,775.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) 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: July 14, 2014

