



Dispute Resolution Services

Page: 1

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 a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent, to keep the Tenant's security deposit, for money owed or compensation for loss or damage under the *Residential Tenancy Act* (the "Act"), and to recover the filing fee for the cost of making the Application.

The Landlord appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. The Landlord testified that she served the Tenant with a copy of the Application and the Notice of Hearing documents on September 3, 2014 by registered mail.

The Landlord provided the Canada Post tracking number in written evidence to support this method of service. Section 90(c) of the Act states that a document sent by registered mail is deemed to have been received five days after it is mailed. Based on the evidence of the Landlord, and in the absence of any evidence from the Tenant to dispute this, I find that the Landlord served the Tenant with the required documents for this hearing in accordance with Section 89(1) (c) of the Act.

There was no appearance by the Tenant during the 12 minute hearing and there was no submission of written evidence by the Tenant prior to this hearing, despite being served notice of this hearing in accordance with the Act. As a result, I have carefully considered the undisputed oral and written evidence of the Landlord in this decision as follows.

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 and late fees?
- Is the Landlord entitled to keep all of the Tenant's security deposit?

Background and Evidence

The Landlord testified that this tenancy started approximately three years ago. No written tenancy agreement was completed but rent was established in the amount of \$950.00 payable by the Tenant on the first day of each month. The Tenant also paid the a \$475.00 security deposit at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenant failed to pay full rent on July 1, 2014 leaving an outstanding balance of **\$320.00** payable for July, 2014. The Tenant then also failed to pay no rent for the month of August, 2014. This then left the Landlord in **\$1,270.00** in rental arrears.

As a result the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting it on the Tenant's door on August 22, 2014. A copy of the Notice provided in written evidence, shows an expected date of vacancy of August 29, 2014 due to \$1,290.00 in unpaid rent. The Landlord explained that the extra \$20.00 related to a late rent fee charged to the Tenant.

The Landlord testified that the Tenant also failed to pay for September, 2014 in the amount of \$950.00 and subsequently made an Application to seek the unpaid rent amount for \$2,240.00.

Analysis

Sections 46(4) and (5) of the Act states that within five days of a Tenant receiving the Notice, a 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 of the Notice.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act. The Tenant was served by the Landlord with the Notice on August 22, 2014 by attaching it to the Tenant's door.

Section 90(c) of the Act explains that documents served by attaching them to the Tenant's door are deemed to have been received three days after.

Therefore, I find that the Tenant was deemed to be served with the Notice on August 25, 2014, and had until August 30, 2014 to pay the overdue rent or dispute the Notice, neither of which the Tenant did. As the Notice was not deemed to have been received by the Tenant until August 25, 2014, the effective vacancy date on the Notice is corrected to September 4, 2014 pursuant to Section 53 of the Act.

As a result, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the corrected vacancy date of the Notice and therefore, the Landlord is entitled to an Order of Possession effective two days after service on the Tenant as the effective date of vacancy on the Notice has now passed.

Based on the written and verbal evidence of the Landlord above and in the absence of any evidence from the Tenant to dispute this, I find that the Landlord is also awarded the rental arrears in the amount of **\$2,220.00** claimed.

Section 7(d) of the *Residential Tenancy Regulation* allows a Landlord to charge a fee of no more than \$25.00 for late payment of rent **which is documented in a tenancy agreement**. As the Landlord failed to complete a written tenancy agreement for this tenancy, I am unable to award the Landlord the \$20.00 late payment fee claimed.

As the Landlord has been successful in this matter, the Landlord is entitled to recover the **\$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable to the Landlord is \$2,270.00. As the Landlord already holds the Tenant's security deposit of \$475.00, and no interest is payable on this amount, 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 \$1,795.00.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **two days after service on the Tenant**. 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 Residential Tenancy Act in the amount of **\$1,795.00**. This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) 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: September 26, 2014

Residential Tenancy Branch

