



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 concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and hearing package by registered mail on August 25, 2014, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord. The landlord testified that the tenant was served on that date and in that manner and has provided a copy of the Canada Post receipt and Customer Receipt showing a tracking number, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All testimony and the evidence provided by the landlord have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on July 1, 2013 and the tenant still resides in the rental unit. Rent in the amount of \$1,300.00 per month is payable in advance on the 1st day of each month. There is no written tenancy agreement, however the landlord testified that at the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00 which is still held in trust by the landlord.

The landlord further testified that the tenant failed to pay rent when it was due for the month of August, 2014 and the landlord served to the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on August 12, 2014 by posting it to the door of the rental unit. A copy of the notice has been provided and it is dated August 12, 2014 and contains an expected date of vacancy of August 23, 2014. The notice states that the tenant failed to pay rent in the amount of \$1,300.00 that was due on August 1, 2014. The tenant has not served the landlord with an application for dispute resolution disputing the notice, and the tenant is now also in arrears the rent for September and October, 2014. The landlord filed the application for dispute resolution on August 25, 2014, and arrears of rent have accumulated to \$3,900.00 to the end of October, 2014.

The landlord requests an order of possession and a monetary order for the unpaid rent and to keep the security deposit in partial satisfaction of the claim.

Analysis

The *Residential Tenancy Act* states that once a tenant has been served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to dispute the notice or pay the rent in full. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, I accept the evidence of the landlord that the tenant was served with the notice by posting it to the door of the rental unit on August 12, 2014. The *Act* also states that notices served in that manner are deemed to have been served 3 days later, which I find is August 15, 2014. The notice to end tenancy cannot be effective until 10 days after service, and the *Act* provides that incorrect effective dates contained in the

notice are changed to the nearest date that complies with the *Act*, which I find is August 25, 2014. The landlord testified that the tenant has not moved out, has not paid the rent and has not served the landlord with an application for dispute resolution disputing the notice, and therefore I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled to an order of possession on 2 days notice to the tenant.

I am also satisfied that the landlord has established a claim for unpaid rent in the amount of \$3,900.00 for the months of August, September and October, 2014.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

I order the landlord to keep the \$600.00 security deposit and I grant a monetary order in favour of the landlord for the difference in the amount of \$3,350.00.

Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the \$600.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,350.00.

These orders are final and binding and may be enforced.

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: October 11, 2014

Residential Tenancy Branch

