



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Triple Star Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, 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 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.

An agent for the landlord company attended the hearing and gave affirmed testimony. However, despite being personally served with the Landlord Application for Dispute Resolution, Notice of a Dispute Resolution Hearing and evidence package on August 22, 2014 by the landlord's agent, and again personally on September 14, 2014 by the on-site manager, 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's agent. The landlord's agent testified that the tenant was served on those dates and in that manner, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The landlord's agent also advised that evidentiary material was provided by the landlord's agent to the Residential Tenancy Branch and to the tenant, however none had been received by me prior to the hearing. As of the date of this Decision, no evidentiary material has been received.

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?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on October 1, 2013 and expires on October 31, 2014, and the tenant still resides in the rental unit. Rent in the amount of

\$800.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord testified that the tenant failed to pay rent when it was due for the month of August, 2014 and on August 2, 2014 the tenant was personally served by the landlord's agent with both pages of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. He testified that the notice is dated August 2, 2014 and contains an expected date of vacancy of August 12, 2014. The notice states that the tenant failed to pay rent in the amount of \$800.00 that was due on August 1, 2014. The tenant paid the landlord \$100.00 on August 22, 2014 and the landlord issued a receipt that had marked on it, "For Use and Occupancy Only."

The tenant further failed to pay rent when it was due for September, 2014, having paid \$600.00 to the landlord on September 22, 2014 and another receipt marked "For Use and Occupancy Only" was issued to the tenant. The landlord's agent testified that no rent has been collected for October, 2014 and the tenant is in arrears \$700.00 for August, \$200.00 for September and \$800.00 for October, 2014, for a total of \$1,700.00. The tenant has not served the landlord with an application for dispute resolution disputing the Notice to End Tenancy.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in the approved form, the tenant must pay the rent in full or dispute the notice within 5 days. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit. In this case, in the absence of any evidentiary material from the landlord, I am not satisfied that the tenant was served a notice in the approved form, as required by the *Act*.

Therefore, I dismiss the landlord's application with leave to reapply. The landlord is at liberty to issue another notice to end tenancy if rent remains unpaid.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed with leave to reapply.

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 30, 2014

