



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession and Monetary Order for unpaid rent and late fees; and, authorization to retain all or part of the security deposit and pet damage deposit. The tenant did not appear at the hearing. The landlord testified that she personally served the tenant with the hearing documents in person on September 19, 2014. The landlord provided a document purportedly signed by the tenant on September 19, 2014 acknowledging receipt of "dispute resolution papers". Based upon the undisputed submissions of the landlord, I accepted that the tenant was sufficiently served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

At the outset of the hearing, the landlord testified that the tenant has since paid the outstanding rent and paid monies for use and occupancy for subsequent months. The landlord calculates that the current balance owing is less than the deposits held by the landlord. As such, the landlord indicated a Monetary Order was no longer necessary should the landlord obtain authorization to deduct the outstanding amounts from the deposits. Therefore, I do not provide a Monetary Order with this decision.

Further, I heard that the landlord is optimistic that this tenant may satisfy the rental arrears and continue with the tenancy; however, remedies sought by way of this Application are to be enforced should that not happen. Therefore, I proceeded to consider whether the landlord is entitled to the remedies it is seeking under the Act.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to recover unpaid rent and late fees from the tenant?
3. Is the landlord authorized to make deductions from the security deposit and/or pet damage deposit?

Background and Evidence

The tenancy commenced May 1, 2013 and the tenant paid a security deposit of \$425.00 and a pet damage deposit of \$425.00. The tenant is required to pay rent of \$850.00 on the 1st day of every month. Clause 12 of the tenancy agreement provides that the landlord may charge a late fee of \$25.00.

The landlord submitted that in August 2014 the tenant paid \$112.50 toward the rent owed for September 2014. On September 3, 2014 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door. The Notice indicates rent of \$737.50 was outstanding and has a stated effective date of September 15, 2014.

The landlord testified that the tenant made the following payments after the 10 Day notice was served: \$437.50 on September 29, 2014; \$450.00 on October 1, 2014; \$437.50 on October 21, 2014; and, \$390.00 on October 28, 2014. The landlord testified that receipts were given for "use and occupancy only". As of today's date, the landlord calculates that \$722.50 is currently owed for loss of rent up to and including the month of November 2014.

In addition to loss of rent of \$722.50 the landlord seeks to collect three late payments of \$25.00 each for the months of September 2014, October 2014 and November 2014.

The landlord provided a copy of the tenancy agreement; 10 Day Notice; and signed Proof of Service for the 10 Day Notice as evidence for this proceeding.

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 serve the tenant with a 10 Day Notice to End Tenancy. When a tenant receives a 10 Day Notice the tenant has five days to either 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. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord posted a 10 Day Notice to End Tenancy on the door of the rental unit on September 3, 2014 and I find the tenant was deemed to have received the 10 Day Notice three days later pursuant to section 90 of the Act. Accordingly, the effective date of the Notice automatically changes to comply with the Act and reads September 16, 2014 pursuant to section 53 of the Act

Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on September 16, 2014 and the landlord is entitled to regain possession of the rental unit.

Since the tenant continues to occupy the rental unit and the landlord has requested loss of rent for the month of November 2014, I award the landlord the balance of the loss of rent in the sum of \$722.50 and provide the landlord with an Order of Possession effective November 30, 2014.

I further award the landlord a late fee of \$25.00 for the month of September 2014. However, I make no award for late fees for October or November 2014 since the tenancy agreement and the requirement to pay late fees came to an end in September 2014.

I also award the landlord recovery of the \$50.00 filing fee paid for this application.

In light of all of the above, and pursuant to section 72 of the Act, I authorize the landlord to deduct the following sum from the tenant's security deposit and pet damage:

Loss of Rent: November 2014	\$ 722.50
Late fee: September 2014	25.00
Filing fee	<u>50.00</u>
Authorized deduction from deposits	\$ 797.50

The balance of the deposits remains in trust, to be administered in accordance with the Act.

Conclusion

The landlord has been provided an Order of Possession effective November 30, 2014. The landlord has been authorized to deduct a total of \$797.50 from the tenant's security deposit and pet damage deposit to recover loss of rent, a late fee, and the filing fee paid for this Application.

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: November 04, 2014

Residential Tenancy Branch

