



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, 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 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 to the Residential Tenancy Branch and to the tenant. However, despite being personally served with the Landlord's Application for Dispute Resolution, evidentiary material and notice of this hearing on October 24, 2014, no one for the tenant attended the hearing. 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 documents were served on that date and in that manner; the door to the rental unit was open and the landlord attempted to hand the documents to the tenant but the tenant refused them. The landlord threw them at the tenant. In the circumstances, I find that the tenant has been personally served, and has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony of the landlord has been reviewed and is 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 or utilities?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- 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 security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on April 15, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$550.00 per month is payable in advance on the 1st day of each month, and the landlord collected a pro-rated amount for April, 2014. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$275.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that the tenant failed to pay rent when it was due for the month of October, 2014, and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 2, 2014 but forgot to sign it. The notice contained an expected date of vacancy of October 14, 2014.

The landlord served another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 14, 2014 by posting it to the door of the rental unit. The landlord used the same effective date as the one served earlier. A copy of page 1 of the 2-page notice has been provided, and the landlord testified that both pages were served on the tenant; page 2 on the tenant's copy was on the back-side of page 1. The notice is dated October 14, 2014 and contains an expected date of vacancy of October 14, 2014 for unpaid rent in the amount of \$550.00 that was due on October 1, 2014.

The tenant has not paid any rent since the issuance of the notice and has told the landlord that he will be moving out but has not yet done so. The landlord requests an Order of Possession and a monetary order for the unpaid rent of \$1,100.00, and an order permitting the landlord to keep the security deposit in partial satisfaction of the claim.

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, the tenant must pay the rent in full or dispute the notice within 5 days of receipt. 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 by the effective date contained in the notice, which must be no less than 10 days after the tenant receives, or is deemed to have received it. The *Act* also states that incorrect effective dates contained in a notice are changed to the nearest date that complies with the *Act*.

In this case, the landlord testified that the tenant was served with both pages of the notice on October 14, 2014 by posting them to the door of the rental unit. Therefore, the notice is deemed to be served 3 days later, or on October 17, 2014. The tenant did not pay the rent and did not dispute the notice within 5 days, or by October 22, 2014,

and therefore I find that the tenant has conclusively presumed to have accepted the end of the tenancy. I also find that the effective date of the notice is changed to the nearest date that complies with the *Act*, which is November 2, 2014. The tenant has not moved out of the rental unit, and therefore the landlord is entitled to an Order of Possession on 2 days notice to the tenant, and I so order.

With respect to the monetary order, I accept the testimony of the landlord that the tenant has not paid any rent for the months of October or November, 2014, and the landlord is entitled to a monetary order for those months.

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

I hereby order the landlord to keep the \$275.00 security deposit in partial satisfaction of the claim, and I grant the landlord a monetary order for the difference in the amount of \$875.00.

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 \$275.00 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 \$875.00.

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: December 02, 2014

Residential Tenancy Branch

