



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Paul Bal Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, (MNSD), MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. At the hearing the landlord withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and requested to amend their application for an Order to keep the security deposit.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on December 23, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and agent for the landlord appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

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 to recover unpaid rent?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The landlord testified that this tenancy started on May 15, 2014 for a fixed term for three years. There were two tenants originally named on the tenancy agreement. The other tenant wrote to the landlord on November 04, 2014 asking to be released from the agreement. The landlords agreed to do so and the tenancy continued with the tenant named on this application. Rent for this unit is \$2,500.00 a month due on the 1st of each month. The tenant paid a security deposit of \$1,250.00 at the start of the tenancy.

The landlord testified that the tenant failed to pay all the rent due for December. The tenant carried out some unauthorised and non-emergency work at the unit and deducted the amount of \$900.00 for this work from his December's rent. The landlord testified that the tenant had done this before and completed work in the house without consent from the landlord and then deducted any amounts he thought the work was worth from the rent.

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on December 09, 2014. The Notice had an effective date of December 19, 2014 and informed the tenant that he had five days to either pay the outstanding rent of \$900.00 or file an application to dispute the Notice. The landlord testified that the tenant failed to pay the outstanding rent and has paid no rent for January, 2015. The landlord seeks to recover the outstanding rent of \$3,400.00.

The landlord orally requested an Order to keep the security deposit of \$1,250.00 to offset against the outstanding rent.

The landlord seeks an Order of Possession effective as soon as possible and an Order to recover the filing fee of \$50.00

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied that there is outstanding rent for December, 2014 of \$900.00. A tenant is not entitled to make any deductions from rent unless authorized by the landlord, or to cover the cost of emergency repairs if the tenant has complied with s. 33 of the *Act*, or as ordered by the director. I further find the tenant owes rent for January, 2015 of \$2,500.00. Consequently, it is my decision that the landlord is entitled to recover these amounts to a total of **\$3,400.00** and will receive a Monetary Order pursuant to s. 67 of the *Act*.

I Order the landlord pursuant to s. 72(2)(b) of the *Act* to keep the tenant's security deposit of **\$1,250.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$3,400.00
Filing fee	\$50.00
Less security deposit	(-\$1,250.00)
Total amount due to the landlord	\$2,200.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door it was deemed served three days after posting on December 12, 2014. The effective date of the Notice is amended to

December 22, 2014 pursuant to s. 53 of the *Act*. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,200.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondent and is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord two (2) days after service upon the Respondent. This Order must be served on the Respondent and may be filed in the Supreme Court and enforced 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: January 20, 2015

Residential Tenancy Branch

