



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession pursuant to the notice to end tenancy for nonpayment of rent and late fees. The landlord also applied for a monetary order for unpaid rent, late fees, loss of income and the filing fee, and to retain the security deposit in partial satisfaction of the claim.

The notice of hearing was served on the tenant on January 15, 2015 by registered mail. The landlord filed proof of having done so. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

During the hearing the landlord requested that his application to retain the deposit be dismissed with leave to reapply, at the end of the tenancy. Since the tenant has not moved out, I grant the landlord's request and dismiss this portion of the landlord's application with leave to reapply.

Issues to be decided

Is the landlord entitled to an order of possession and a monetary order for rent, late fees, loss of income and the recovery of the filing fee?

Background and Evidence

The tenancy started in April 2014. The monthly rent is \$1,250.00 due in advance on the first of each month. The landlord filed a copy of the signed tenancy agreement. A clause in the agreement requires the tenant to pay a late fee of \$25.00 for rent paid after the first of each month.

The landlord stated that the tenant fell behind on rent in September 2014 and owed \$625.00. In addition the tenant failed to pay rent on October 01, 2014.

On October 06, 2014, the landlord served the tenant with a ten day notice to end tenancy and filed a copy of the notice into evidence. The notice indicates that the tenant owed \$625 for September, 2014, \$1,250.00 for October, 2014 and \$50.00 for late fees.

The landlord stated that the tenant paid rent on October 29 and November 12, 2014 and filed receipts into evidence. The tenant did not pay the late fees and was late again in December, after having received another ten day notice on December 09, 2014.

The landlord stated that the tenant did not pay rent for January and on January 03, 2015; the landlord served the tenant with a notice to end tenancy for a total of \$2,025.00 in unpaid rent and late fees. This total amount consists of unpaid rent for September 2014 (\$625.00), rent for January 2015 (\$1,250.00) and late fees for September to January (\$150.00).

The tenant did not dispute the notice, did not pay rent and continues to occupy the rental unit. The landlord has applied for an order of possession effective two days after service on the tenant and for a monetary order for unpaid rent (\$2,025.00) plus the filing fee (\$50.00). The landlord has also applied for loss of income for February 2015.

Analysis

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy for unpaid rent on January 03, 2015 and did not pay full rent within five days of receiving the notice to end tenancy nor did the tenant make application, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The order may be filed in the Supreme Court for enforcement.

I further find that the landlord is entitled to rent and late fees in the amount of \$2,025.00. Since the tenant has not yet moved out and it is possible that the landlord may find a tenant for February or a portion thereof, I dismiss the landlord's application for loss of income for February 2015, with leave to reapply.

Since the landlord has proven his case, he is entitled to the recovery of the filing fee of \$50.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for \$2,075.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective **two days after service** on the tenant and a monetary order in the amount of **\$2,075.00**.

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 29, 2015

Residential Tenancy Branch

