



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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 an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The parties advised me there was an error in the spelling of the tenants last name. The parties did not raise any objections to the error being corrected and this has now been amended.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover rent owed?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The parties agreed that this fixed term tenancy started on August 01, 2014 for a fixed term due to expire on February 28, 2015. Rent for this unit is \$1,350.00 per month due on the first of each month. The tenant paid a security deposit of \$675.00 on August 01, 2014. Originally there were two tenants but male tenant moved out on November 17, 2014.

The landlord testified that the tenants failed to pay all the rent due on: September 01, 2014 leaving an unpaid balance of \$50.00; on October 01, 2014 leaving an unpaid balance of \$650.00; and no rent was received for November, 2014 of \$1,350.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on November 07, 2014. This was posted to the tenants' door and was deemed to have been served three days after posting. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on November 21, 2014. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the female tenant has failed to pay rent for November, 2014 of \$1,350.00, December, 2014 of \$1,350.00 and January, 2015 of \$1,350.00. The total amount of unpaid rent is now \$4,750.00.

The landlord has applied to retain the tenant's security deposit in partial payment towards the rent arrears and the filing fee of \$50.00. The landlord has also applied for an Order of Possession to take effect at the end of February, 2015 to give the tenant time to move out of the unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the *Act* 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 from the evidence presented that there is outstanding rent from September, 2014 to January, 2015. Consequently, it is my decision that the landlord is entitled to recover rent arrears of **\$4,750.00**.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$675.00** 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	\$4,750.00
Filing fee	\$50.00
Less security deposit	(-\$675.00)
Total amount due to the landlord	\$4,125.00

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 November 10, 2014. The tenant did not pay 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 for two days after service upon the tenant 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 **\$4125.00**. 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 effective **two days** after service on the tenant. 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: February 05, 2015

Residential Tenancy Branch

