



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 concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities, 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 and gave affirmed testimony, however despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on January 22, 2015, no one for the tenant attended. 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 tenant was served on that date and in that manner and orally provided a tracking number assigned by Canada Post and a date from the receipt provided by Canada Post for the registered mail. The landlord also testified that an on-line search tracking the registered mail has revealed that it was accepted for delivery on January 29, 2015. I accept the affirmed testimony of the landlord and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided by 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?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

- 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 November 1, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$900.00 per month is payable in advance on the 1st day of each month, although there is no written tenancy agreement.

The rental unit is a 2 bedroom home and was rented to a different tenant, who paid the landlord a security deposit in the amount of \$275.00, and when this tenant moved in he also paid a security deposit in the amount of \$275.00. The first tenant moved out without advising the landlord, and the remaining tenant told the landlord toward the end of November, 2014. No forwarding address has been received by the landlord and the landlord currently holds both deposits.

The tenant, or either of them, failed to pay rent for the month of January, 2015, and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on January 2, 2015. A copy of the notice has been provided and it is dated January 2, 2015 and contains an expected date of vacancy of January 12, 2015 for unpaid rent in the amount of \$900.00 that was due on January 1, 2015. No rent has been paid since the issuance of the notice, and the landlord has not been served with an application for dispute resolution by the tenant disputing the notice.

Analysis

The *Residential Tenancy Act* states that if a tenant does not pay the rent in full or dispute a notice to end the tenancy for unpaid rent or utilities within 5 days of receiving the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no less than 10 days after the tenant receives, or is deemed to have received it. In this case, the landlord served the tenant with the notice by posting it to the door of the rental unit on January 2, 2015.

Documents served in that manner are deemed to have been served 3 days later, which I find is January 5, 2015. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The tenant did not pay the rent in full or dispute the notice within 5 days, and therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy. Incorrect effective dates contained in a notice are changed to the nearest date that complies with the *Act*, which I find is

January 15, 2015. The tenant has not moved out of the rental unit and I find that the landlord is entitled under the *Act* to an Order of Possession.

With respect to the monetary claim, I am satisfied that the landlord is owed \$900.00 for January's rent. The tenant still resides in the rental unit, and I find that the landlord is entitled to half a month's rent for February, 2015, for a total of \$1,350.00. However, the landlord also holds \$550.00 in security deposits which I find should be applied to the claim. Although the tenants paid separate amounts to the landlord, both deposits were security with respect to the tenancy.

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 \$550.00 security deposits in partial satisfaction of the claim and I grant a monetary order in favour of the landlord in the amount of \$850.00.

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 \$550.00 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 \$850.00.

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: February 10, 2015

Residential Tenancy Branch

