



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAVID BURR LTD
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 an Order permitting the landlords to keep all or part of the tenant's security deposit; 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 tenants for the cost of this application. The landlord's agent withdrew the landlord's claim for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement during the hearing.

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 January 23, 2015. Canada Post tracking numbers were provided by the landlord's agent in 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's agent appeared, gave sworn testimony, was 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.

Preliminary Issues

The hearing was originally convened on February 10, 2015; however, due to unforeseen circumstances the Arbitrator at that hearing was unable to complete the decision. The parties agreed to the matter being reheard and new hearing letters were sent to the parties by the Residential Tenancy Board for today's hearing.

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 all or part of the security deposit?

Background and Evidence

The landlord's agent CM testified that this tenancy originally started in January, 2007 and a new tenancy agreement was entered into on March 01, 2019 when the tenant also rented the basement suite from the landlords. Rent was increased in March, 2009 to \$1,614.00. Rent is due on the first of each month. The tenant paid a security deposit of \$547.50 on January 15, 2007.

CM testified that the tenant was continually short with her rent over the last two years. This led to rent arrears owed on December 01, 2014 of \$5,463.00. The landlord has provided rent statements spanning the tenancy. Three 10 Day Notices were served upon the tenant regarding rent arrears. One on October 08, 2014 when there was \$3,785.00 outstanding; one on November 07, 2014 when there was \$4,149.00 outstanding; and one on December 08, 2014 showing the outstanding rent at \$5,463.00.

On January 01, 2015 the tenant failed to pay the rent for January or the accumulated arrears. This left an outstanding balance as of January 02, 2015 of 7,077.00. The

landlords issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on January 08, 2015. This was served by posting it to the tenant's door on that date. The tenant had five days to either pay the outstanding rent of \$7,077.00, or apply for Dispute Resolution or the tenancy would end on January 18, 2015. The tenant did make a partial payment of \$1,000.00 on January 09, 2015. This left an unpaid balance of \$6,077.00. Since that time the tenant has failed to pay the outstanding rent arrears or rent for February, 2015 of \$1,614.00. The total amount of unpaid rent is now \$7,691.00.

CM testified that there had been an incident with the licenced day care facility next door to the tenant's unit. A parent collecting a child had driven into the tenant's unit which left some damage to the outside of the unit and the basement suite. The tenant informed the landlord that this affected her ability to rent the basement unit and therefore her income to afford her rent. CM testified that the tenant refused access to the basement suite to allow the restoration company to assess the damage and begin work.

Consequently, the landlord has not been able to deduct anything from the tenant's rent arrears but will negotiate with the tenant if a Monetary Order is received for the unpaid rent as to any amounts the landlord may deduct for the loss of the basement suite. CM agreed that the tenant's rent did increase by \$405.00 a month when the tenant took over the basement suite. The work on the basement suite has still not been completed three months later.

The landlords have applied to retain the tenant's security deposit of \$547.50 in partial payment of the rent arrears. The landlords have also applied for an Order of Possession to take effect as soon as possible.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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 was outstanding rent due up to December, 2014 of \$5,463.00 and outstanding rent for January and February, 2015 of \$2,228.00. Consequently, it is my decision that the landlord is entitled to recover these amounts to a total of **\$7,691.00**. If the tenant had issues concerning the damage to the basement suite the tenant was at liberty to file an application to recover rent or have repairs made if the tenant felt the landlord was in non-compliance with the *Act*, but the tenant is not entitled to withhold rent without an Order to do so, pursuant to s. 26 of the *Act*.

I Order the landlord, pursuant to s. 38(4)(b) of the *Act*, to keep the tenant's security deposit of **\$547.50** plus accrued interest of **\$16.23** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$100.00** filing fee for this proceeding.

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

Outstanding rent	\$7,691.00
Filing fee	\$100.00
Less security deposit and accrued interest	(-\$563.73)
Total amount due to the landlord	\$7,227.27

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.

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 the Notice was posted to the tenant's door it was deemed served three days after posting. Therefore, the effective date of the Notice is amended to January 21, 2015 pursuant to s. 53 of the *Act*. As this date has since passed I grant the landlord an Order of Possession effective two days after service, 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 **\$7,227.27** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective two days after service upon the Respondent. This Order must be served on the Respondent, if the Respondent fails to comply with the Order, the Order 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: March 05, 2015

Residential Tenancy Branch

