



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, O, 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 or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord 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; other issues; and to recover the filing fee from the tenants for the cost of this application.

The tenant and landlords agents 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.

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?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on October 17, 2014. Rent for this unit was \$1,350.00 per month, due on the first of each month. The landlord testified that they

reduced the rent to \$1,150.00 in January, 2015. The tenant paid a security deposit of \$675.00 on October 17, 2014.

The landlord's agent testified that the tenant failed to pay all the rent due for January and February, 2015. There is an outstanding balance for January of \$550.00 and an outstanding balance for February of \$1,150.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on February 04, 2015. This was posted to the tenant's door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on February 17, 2015. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has failed to pay rent for March, 2015 of \$1,150.00. During the hearing the landlord's agent agreed that they had spoken to the tenant about a further rent reduction to compensate the tenant for a loss of quiet enjoyment of the rental unit and for the loss of the tenant's yard during construction. The landlord's agent agreed that from January, 2015 they would reduce the rent to \$950.00. The landlord therefore seeks to recover \$350.00 for January and \$950.00 for February and March. The landlord's claim for unpaid rent is therefore amended to \$2,250.00.

The landlord seeks a loss of rental income for April of \$950.00 as the tenant has been smoking in the rental unit and it will take the landlord time to clean the smell of smoke from the unit before it can be re-rented.

The landlord has applied to retain the tenant's security deposit of \$675.00 in partial payment of the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible. The landlord seeks to recover the \$50.00 filing fee from the tenant.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I am satisfied from the evidence before me that there is outstanding rent for January, February and March, 2015 and that the landlord has reduced their claim for unpaid rent as documented above. 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.

Consequently, it is my decision that the landlord is entitled to recover rent arrears of **\$2,250.00**.

I am not satisfied that the landlord is entitled to recover a loss of rental income for April, 2015. The landlord must attempt to mitigate the loss by re-renting the unit in a timely manner. It is my decision that the landlord may still have the opportunity to re-rent the unit for April and has not shown that there is smoke damage in the unit. Therefore I am not prepared to award a loss of income for April at this time. This section of the landlord's claim is dismissed with leave to reapply.

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's claim has merit, 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	\$2,250.00
Filing fee	\$50.00
Less security deposit	(-\$675.00)
Total amount due to the landlord	\$1,625.00

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 to the tenants door it was deemed served three days after posting on February 07, 2015. 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

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$1,625.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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. 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 24, 2015

Residential Tenancy Branch

