



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR (OPC), 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 landlord's representative attending sought to amend the application to change the Order of Possession from one for unpaid rent to one for cause due to the nature of the Notice given to the tenant. I have allowed the landlord to amend this application as the tenant should be aware that it was a One Month Notice served upon the tenant not a 10 Day Notice and this amendment should therefore not prejudice the tenant in any way.

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 February 25, 2015. Canada Post tracking numbers were provided by the landlord in documentary 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 representative (the landlord) 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.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for cause?
- Is the landlord entitled to a Monetary Order for unpaid rent?

- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The landlord testified that this month to month tenancy started on October 01, 2013. Rent for this unit is \$695.00 per month due on the 1st day of each month. The tenant paid a security deposit of \$347.50 on October 01, 2013.

The landlord testified that the tenant has been late with his rent on many occasions throughout 2014 and 2015. Rent was paid late for July, August, October, November, December, 2014 and January, 2015. No rent has been paid for February or March, 2015. The landlord served the tenant with a One Month Notice to End Tenancy for cause on January 28, 2015. This Notice was served upon the tenant by posting it to the door of the rental unit. The Notice has an effective date of February 28, 2015 and informed the tenant that the landlord is ending the tenancy because the tenant has been repeatedly late paying rent.

The landlord testified that he believes the tenant may have vacated the rental unit; however, the tenant has not actually informed the landlord of this, the tenant has changed the locks to the unit to prevent the landlord gaining access and the tenant continually accesses the unit and turns up his music system which disturbs other tenants. The Police have been called concerning the loud music on March 19, 2015. As the landlord and police could not gain access to the unit, the police turned off the power to the unit. The tenant returned to the unit and turned the power back on March 20, 2015. The police were called out again and they spoke to the tenant at that time.

The landlord testified that as the tenant has not provided vacant possession of the rental unit to the landlord but rather remains in possession of the unit, even if the tenant is also living elsewhere then the landlord seeks an Order of Possession of the rental unit as no rent has been received for February and March, 2015 to the amount of \$1,390.00. The landlord therefore seeks to recover this rent as the landlord has not been given possession of the rental unit.

The landlord seeks an Order to keep the security deposit of \$347.50 to offset against the unpaid rent. The landlord also seeks to recover the \$50.00 filing fee from the tenant.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the

tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me.

When a tenant is served with a One Month Notice to End Tenancy the tenant is provided with information on page two of that Notice about how the tenant can dispute the Notice by filing an application for Dispute Resolution. The landlord has provided a copy of this Notice served upon the tenant on January 28, 2015. As the Notice was served upon the tenant by posting it to the door it is considered to have been served three days later on January 31, 2015. The tenant has not disputed the One Month Notice within the 10 allowable days as indicated on page two of the Notice.

Consequently, as the tenant did not file an application to dispute the Notice the tenant is presumed to have accepted the end of the tenancy pursuant to s. 47(5) of the *Act*. The Notice indicates an effective date of February 28, 2015; as this date has since passed the landlord is entitled to an Order of Possession for two days after service upon the tenant pursuant to s. 55 of the *Act*.

Furthermore, I am satisfied that the tenant has been repeatedly late paying rent more than three times in the last 12 months. I further find that the tenant has not provided vacant possession of the rental unit to the landlord and although the tenant may be residing elsewhere the tenant continues to have possession of the rental unit as the locks have been changed and the keys not provided to the landlord, the tenant continues to have some belongings or at least some system to play music on in the rental unit and the tenant has continued to return and access the rental unit throughout February and March. The landlord has provided two police file numbers dated March 19 and March 20, 2015 concerning the days the police were called to the unit due to loud music

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Consequently, I am satisfied that the landlord has established a claim to recover rent of **\$1,390.00** for February and March, 2015. I Order the landlord to retain the tenant's

security deposit of **\$347.50** in partial payment of these rent arrears pursuant to s. 38(4)(b) of the *Act*.

As the landlord's claim has merit I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$1,390.00
Filing fee	\$50.00
Less security deposit	(-\$347.50)
Total amount due to the landlord	\$1,092.50

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 **\$1,092.50**. 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 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 25, 2015

Residential Tenancy Branch

