



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNR, MNSD, MNDC, 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 a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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 and a witness for the landlord attended the hearing and each gave independent affirmed testimony. However, despite being personally served with the Landlord's Application for Dispute Resolution and notice of this hearing on March 26, 2015, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any affirmed testimony, and the only participants who joined the call were the landlord and the landlord's witness. The landlord testified that the tenant was served on that date and in that manner, and the landlord's witness also testified that notes taken confirm the date the tenant was served, and I am satisfied that the tenant was served in accordance with the *Residential Tenancy Act*. All evidence and testimony provided 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?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damages to a window?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$610.00 per month is payable in advance on the 1st day of each month. A written tenancy agreement was signed by the parties, however a copy was not provided for this hearing. The tenancy agreement specified a security deposit in the amount of \$305.00, being half of the rent, however the tenant paid \$145.00 prior to the commencement of the tenancy and another \$100.00 on February 1, 2015, and the balance of \$60.00 has not been collected. The landlord still holds \$245.00 in trust. The rental unit is one of 15 apartments in a rental complex.

The landlord further testified that the tenant failed to pay rent when it was due in March, 2015 and the landlord's resident manager issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on behalf of the landlord. A copy of both pages of the 2-page notice has been provided and it is dated March 7, 2015 and contains an expected date of vacancy of March 17, 2015 for unpaid rent in the amount of \$640.00 that was due on March 1, 2015. The landlord testified that only \$610.00 of that amount was for unpaid rent.

The landlord has not been served with an application for dispute resolution by the tenant disputing the notice.

The tenant paid the rent at the very end of March, 2015 but has not paid any rent for April and currently owes the landlord \$610.00. The tenant has also broken a window in the rental unit but the landlord has not been able to enter the rental unit to complete the repair. The landlord claims \$200.00 but is not certain of the amount it will actually cost.

The landlord claims an Order of Possession, an order permitting the landlord to keep the security deposit in partial satisfaction of the claim and a monetary order for the unpaid rent, broken window, and recovery of the filing fee.

The landlord's witness testified that she is the resident manager of the rental complex, and as such collects rent, deals with conflict resolution between tenants, passes on maintenance concerns of tenants to the landlord and sometimes serves notices or other documents on behalf of the landlord.

On March 7, 2015 the witness prepared a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and attended the rental unit with another person present and personally handed it to the tenant. The witness testified that the notice was dated March 7, 2015 and contained an effective date of vacancy of March 17, 2015.

The witness has not been served with an application for dispute resolution by the tenant disputing the notice.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the

notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, I am satisfied that the tenant was personally served with the notice on March 7, 2015. The tenant paid the outstanding rent, but not within 5 days. Further, the tenant failed to pay any rent for the following month, and I am satisfied that the landlord is entitled to an Order of Possession on 2 days notice to the tenant.

I am also satisfied that the landlord is owed one month's rent, being \$610.00.

I am not satisfied, however, that the landlord has established the cost to repair the window, and I find it premature to deal with a damage claim. That portion of the landlord's application is dismissed.

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 \$245.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order for the difference in the amount of \$415.00.

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 \$245.00 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 \$415.00.

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: April 30, 2015

Residential Tenancy Branch

