



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding D & S DUPERRON PROPERTY HOLDINGS INC.
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 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; and to recover the filing fee from the tenant for the cost of this application.

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 April 04, 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 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*.

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 landlord's agent testified that this fixed term tenancy started on December 01, 2013 and reverted to a month to month tenancy on June 01, 2014. Rent for this unit is \$750.00 plus parking of \$10.00. Rent and parking fees of \$760.00 are due on the 1st of each month. The tenant paid a security deposit of \$375.00 on November 04, 2013.

The landlord's agent testified that the tenant failed to pay the rent on December 01, 2014 and January 01, 2015. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 18, 2015. This was posted on 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 of \$1,520.00, apply for Dispute Resolution or the tenancy would end on January 28, 2015. Since the Notice was served the tenant has failed to pay rent for February, March, April and May, 2015. The tenant did make payments of \$900.00 in February and \$300.00 in March. This was accepted by the landlord for use and occupancy only. The balance of rent and parking of \$3,360.00 remains unpaid. The landlord requested to amend their application to include the unpaid rent for May.

The landlord seeks to recover late fees of \$25.00 per month for six months that rent has been late or unpaid.

The landlord has applied to retain the tenant's security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I am satisfied from the evidence presented in the form of the 10 Day Notice and the rent ledger that there is outstanding rent and parking fees of **\$3,360.00**. Consequently, the landlord is entitled to recover this amount from the tenant. I have allowed the landlord to amend their application to include unpaid rent for May as the tenant continues to reside in the rental unit and would therefore be aware that rent is due and payable on May 01, 2015.

With regard to the landlord's claim to recover late fees of \$25.00 per month for six months.; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is not a clause contained in the agreement that provides for late fees. Consequently, I find the landlord is not entitled to recover late fees from the tenant and this section of the landlord's claim is dismissed.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$375.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

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 and parking	\$3,360.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$375.00)
Total amount due to the landlord	\$3,035.00

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 on the tenant's door it was deemed served three days after posting on January 21, 2015. The effective date of the Notice is therefore amended to January 31, 2015. 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 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

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,035.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondent and is enforceable through the Provincial Court as an Order of that Court.

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 and 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: May 12, 2015

Residential Tenancy Branch

