



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and loss of rent. The tenant did not appear at the hearing. The landlord testified that he personally served the tenant with the hearing package on June 19, 2015 at the rental unit in the presence of a witness. In the absence of evidence to the contrary, I accepted that the tenant was served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

During the hearing, the landlord requested that the application be amended to include a request to retain the security deposit in partial satisfaction of the unpaid rent. As this request would reduce any Monetary Order that would be provided to the landlord I found the request non-prejudicial to the tenant and I permitted the amendment.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent or loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

A co-tenancy commenced September 1, 2014 and the landlord collected a security deposit of \$775.00. The tenants were required to pay rent of \$1,550.00 on the 1st day of every month. The female co-tenant moved out of the rental unit in January 2015 and since that time the male tenant has struggled to pay rent in full and on time.

The landlord submitted that the tenant owed \$600.00 for May 2015 and had not paid rent for June 2015 when the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid rent (the Notice) on June 9, 2015. The landlord testified that

he served the tenant with both pages of the Notice and the tenant signed the first page as evidence he received the Notice. The Notice was provided as evidence for my review and it has an effective date of June 19, 2015.

The landlord filed this Application on June 19, 2015 indicating the tenant still owed \$600.00 for May and \$350.00 in rent for June 2015. The landlord also applied for loss of rent for July 2015 and August 2015. The landlord testified that the tenant did eventually pay the rent for June 2015 at the end of June 2015 and that rent was paid for July 2015 as well. The tenant has not; however, paid any rent for August 2015 and continues to occupy the rental unit.

The landlord seeks an Order of Possession effective as soon as possible and recovery of unpaid and/or loss of rent for May and August 2015.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the undisputed evidence before me that the landlord personally served the tenant with both pages of a 10 Day Notice on June 9, 2015. Since the tenant did not pay all of the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on June 19, 2015. Although the tenant eventually paid all of the outstanding rent for June 2015 I am satisfied that the landlord put the tenant on notice that the landlord intended to end the tenancy by serving him with the hearing documents. Therefore, I grant the landlord's request for an Order of Possession.

Provided to the landlord with this decision is an Order of Possession that is effective two (2) days after it is served upon the tenant.

Based upon the undisputed evidence before me, I accept that the tenant still owes \$600.00 in rent for May 2015 and the landlord is entitled to recovery of that amount from the tenant. I also accept that the tenant has continued to occupy the rental unit in

August 2015 and the landlord has suffered a loss of rent for the month of August 2015 due to the tenant's actions. Therefore, I find the landlord entitled to recovery loss of rent from the tenant for the month of August 2015.

I also award the landlord recovery of the \$50.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord by way of this decision.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: May 2015	\$ 600.00
Loss of Rent: August 2015	1,550.00
Filing fee	50.00
Less: security deposit	<u>(775.00)</u>
Monetary Order	\$1,425.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,425.00 to serve and enforce.

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: August 18, 2015

Residential Tenancy Branch

