



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, OPB, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession based upon a 2 Month Notice to End Tenancy and a 10 Day Notice to End Tenancy; a monetary order for arrears of rent and damages; and an order permitting retention of the security deposit in partial satisfaction of the claim. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail deemed delivered on September 21, 2015, the tenant did not appear.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, on what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?
- What order should be made with respect the security deposit?

Background and Evidence

This one year fixed term tenancy commenced November 1, 2014. The monthly rent of \$1850.00 is due on the first day of the month. The tenant paid a security deposit of \$925.00 and a pet damage deposit of \$925.00. The tenant provided post-dated cheques for the rent.

On July 24, 2015 the landlord issued and posted a two month Notice to End Tenancy for Landlord's Use with an effective date of October 31, 2014. The rental unit has been sold with a possession date of October 31, 2015 and the purchaser has asked for vacant possession as required by the *Residential Tenancy Act*. The tenant has not served the landlord with an application for dispute resolution disputing the notice.

The tenant's cheques for the July and August rent were returned to the landlord "NSF". The landlord issued a 10 Day Notice to End Tenancy for Non-Payment of Rent. The notice was served by registered mail deemed delivered on September 1, 2015. The

tenant has not paid the July or August rent nor has she served the landlord with an application for dispute resolution disputing the notice to end tenancy.

The tenant's cheques for the September and October rents have been returned to the landlord "NSF".

As of the date of the hearing the tenant is still in possession of the rental unit.

The landlord knows there has been some damage to the unit but is not able to quantify his damages until he regains possession of the rental unit.

Analysis

The tenant has not paid the outstanding rent and did not apply to dispute the 10 Day Notice to End Tenancy for Non-Payment of Rent and is therefore conclusively presumed under section 46(5) of the *Residential Tenancy Act* to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession effective two days after service on the tenant.

Further, section 49(9) provides that a tenant who has been served with a 2 Month Notice to End Tenancy for Landlord's Use within fifteen days is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the unit by that date.

Although a tenant who has been served with a 2 Month Notice to End Tenancy for Landlord's Use is entitled to one month of free rent no credit for that amount has been given for that amount in this decision because the tenant has not yet vacated the rental unit and effective November 1, 2015, another month's rent will be due from the tenant. Any adjustment regarding the last month's rent may be made in a future application for dispute resolution by the landlord or the tenant.

Although the landlord alluded to damages that may exist in the rental unit he cannot claim those damages until after the tenant has vacated the unit. Any claim for damages is dismissed with leave to re-apply.

I find that the landlord has established a total monetary claim of \$7500.00 comprised of arrears of rent for July, August, September and October in the amount of \$7400.00 and the \$100.00 fee paid by the landlord for this application. Pursuant to section 72 I order that the landlord retain the security deposit of \$925.00 and the pet damage deposit of \$925.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$5650.00.

Conclusion

- a. An order of possession effective two days after service on the tenant has been granted. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- b. A monetary order in favour of the landlord in the amount of \$5650.00 has been granted. If necessary, it may be filed in the Provincial Court (Small Claims) 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: October 29, 2015

Residential Tenancy Branch

