



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

Tenant's Applications: CNR, RP, ERP, OLC, FF
Landlord's Application: OPR, MNR, MNSD, MNDC, F

Introduction

This hearing was scheduled to deal with two Applications filed by the tenant and an Application filed by the landlord. All three Applications were joined together and set for hearing at the same time. The tenant had applied for emergency repair orders and orders for compliance. The tenant subsequently applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and repair orders. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent and late fees; and, authorization to retain the security deposit and pet damage deposit.

At the scheduled hearing only the landlord appeared. The landlord provided registered mail receipts and Canada Post tracking information to demonstrate that the landlord's hearing documents were sent to each tenant via registered mail and successfully delivered on August 29, 2015.

I was satisfied the landlord served each of the tenants with the landlord's hearing documents and I continued to hear from the landlord without the tenants present. The tenant's Applications were dismissed due to the tenants failure to appear at the hearing.

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 and/or loss of rent and late fees?
3. Is the landlord authorized to retain the security deposit and pet damage deposit?

Background and Evidence

The six month fixed term tenancy commenced February 1, 2014 and continued on a month to month tenancy after the expiry date of July 31, 2014. The tenants paid a security deposit of \$440.00 and a pet damage deposit of \$440.00. The tenants were required to pay rent of \$880.00 on the 1st day of every month. The tenancy agreement also provides that the landlord may charge a late fee of \$25.00.

I was provided undisputed evidence that the tenants failed to pay rent for August 2015 and the landlord posted both pages of a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on August 6, 2015. The 10 Day Notice indicates rent of \$880.00 was outstanding as of August 1, 2015 and has a stated effective date of August 16, 2015. The tenant filed to dispute the 10 Day Notice on August 9, 2015; however, the tenant's application has been dismissed due to failure to appear at this hearing.

The landlord testified that since posting the 10 Day Notice the tenants did not pay the outstanding rent and have not paid any monies for September 2015 or October 2015 and continue to occupy the rental unit. Accordingly, the landlord seeks an Order of Possession as soon as possible.

The landlord requested compensation for unpaid and/or loss of rent for the months of August through October 2015 as well as late fees for each month.

Documentary evidence provided for my review included a copy of the tenancy agreement; the 10 Day Notice; and registered mail receipts and tracking information.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement even if the landlord has violated the Act, regulations or tenancy agreement unless the tenant has a legal right under the Act to withhold rent. Pursuant to review of the tenancy agreement, I accept that the tenants were required to pay rent in the amount of \$880.00 on the 1st day of every month. I accept the undisputed evidence of the landlord, including the 10 Day Notice, that the tenants failed to pay rent for August 2015. I was not provided any evidence to suggest the tenants had a legal right under the Act to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to issue 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.

I accept the landlord's undisputed evidence before me that the landlord posted a 10 Day Notice on the tenants' door on August 6, 2016 as this is supported by the tenant filing to dispute the Notice on August 9, 2015. As the 10 Day Notice was posted to the door it is deemed to be received by the tenants three days later, on August 9, 2015. Accordingly, the effective date of the Notice automatically changes to comply with the Act and reads August 19, 2015 pursuant to sections 46 and 53 of the Act

In this case, the tenant filed to dispute the 10 Day Notice but the tenant's Application has been dismissed. I also accept the undisputed evidence before me that the tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice. Accordingly, I uphold the 10 Day Notice and find the tenancy legally ended on the effective date of August 19, 2015 and the landlord is entitled to regain possession of the rental unit. Therefore, I provide to the landlord an Order of Possession effective two (2) days after service upon the tenants.

Upon review of the tenancy agreement and other evidence before me, I find the landlord entitled to recover from the tenants unpaid rent for August 2015 in the amount of \$880.00 and a late fee of \$25.00 as the tenancy agreement provides for a late fee clause that is compliant with the Residential Tenancy Regulations. Since the tenants failed to pay rent and failed to vacate the rental unit by the effective date of the 10 Day Notice I find the tenants in violation of the Act and I satisfied that their actions have caused the landlord to incur further loss of rent for the months of September 2015 and October 2015 and I award the landlord loss of rent for those months in the amount of \$880.00 for each month. I make no award for late fees for the months of September 2015 and October 2015 since the tenancy ended in August 2015 and the landlord's entitlement to compensation after the tenancy ended is loss of revenue.

I authorize the landlord to retain the tenants' security deposit and pet damage deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order to serve and enforce that is calculated as follows:

Unpaid Rent: August 2015	\$ 880.00
Late fee: August 2015	25.00
Loss of Rent: September and October 2015	1,760.00
Filing fee	50.00
Less: security deposit and pet damage deposit	<u>(880.00)</u>
Monetary Order	\$1,835.00

Conclusion

The landlord has been provided an Order of Possession effective two days after service upon the tenants. The landlord has been authorized to retain the tenants' security deposit and pet damage deposit and has been provided a Monetary Order for the balance of \$1,835.00 to serve and enforce.

The tenant's Applications were dismissed.

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 08, 2015

Residential Tenancy Branch

