



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent and loss of rent; and, authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord provided two registered mail receipts, including tracking numbers, as proof the hearing documents were sent to the tenants via registered mail on July 30, 2015 at the rental unit address. The registered mail was unclaimed by the tenants. The landlord testified that the tenants were still living at the rental unit at the time of mailing. I heard from the landlord that the female tenant had informed the landlord just last week that they had vacated the rental unit.

Section 90 of the Act deems a person to have received documents five days after mailing even if the person refuses to accept or pick up their mail. In the absence of evidence to the contrary, I was satisfied the tenants were still living at the rental unit at the time of mailing and the landlord sent the hearing documents to the tenants in a manner that complies with the Act. Therefore, I found the tenants to be deemed served with the hearing documents five days after mailing.

The landlord requested an Order of Possession be provided to him as he has not yet verified that the rental unit has been vacated or abandoned by the tenants.

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 loss of rent?
3. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

Under a verbal tenancy agreement the tenancy started April 2015 and the tenants paid a security deposit of \$450.00. The tenants were required to pay rent of \$900.00 on the 1st day of every month.

The tenants paid \$250.00 toward the rent due for June 2015 and did not pay the rent for July 2015. On July 14, 2015 the landlord personally served a 10 Day Notice to End Tenancy for Unpaid Rent upon the tenants. The tenants signed a Proof of Service for receipt of the 10 Day Notice and service took place in the presence of a police officer who also signed the Proof of Service. The 10 Day Notice indicates the tenants failed to pay the rent that was due for June 2015 and July 2015 and it has an effective date of July 24, 2015. After receiving the 10 Day Notice the tenants did not pay the outstanding rent, did not file to dispute the 10 Day Notice and continued to occupy the rental unit.

The landlord testified that late last week the female tenant advised the landlord that they had vacated the rental unit and the landlord could enter the unit. The landlord has not yet entered the unit to verify it has been vacated. The landlord seeks an Order of Possession to serve and enforce in the event the tenants have not vacated.

In filing his Application the landlord requested compensation for the balance of \$650.00 for June 2015 rent; \$900.00 for unpaid rent for July 2015 and loss of rent for the months of August 2015, September 2015 and October 2015. During the hearing the landlord indicated that he may have found a new tenant for the unit that could start as soon as the end of this week. The landlord requested he be awarded loss of rent until the end of this week with leave to file another application if the unit is not re-rented at the end of the week.

Documentary evidence provided for my review included copies of the 10 Day Notice; Proof of Service of the 10 Day Notice signed by the tenants and the police officer who witnessed service; and, the registered mail receipts.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. The Act defines a tenancy agreement to tenancy agreements entered into orally as was this case.

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. 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 tenants were required to pay rent of \$900.00 on the 1st day of every month and that the tenants failed to do so for the months of June and July 2015 with the exception of a \$250.00 payment. I accept the evidence before me that the landlord personally served the tenants with a 10 Day Notice on July 14, 2015 and that the tenants did not pay the outstanding rent or dispute the 10 Day Notice after receiving it.

Since the tenants did not pay the outstanding rent or dispute the Notice within five days of receiving the 10 Day Notice I find the tenancy ended on July 24, 2015 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession that the landlord may serve and enforce if the tenants have not already vacated the rental unit. The Order of Possession is effective two (2) days after service upon the tenants.

Based upon the evidence before me, I find the landlord is also entitled to recover unpaid rent of \$650.00 for June 2015 and \$900.00 for July 2015. Since the tenants did not end the tenancy in a manner that complies with the Act and violated the Act by continuing to occupy the rental unit despite receiving the 10 Day Notice, I find the landlord is entitled to compensation from the tenants for loss of rent for the months of August 2015, September 2015 and up until October 10, 2015 as requested. I grant the landlord leave to reapply for loss of rent that he may incur after October 10, 2015 as a result of the tenants' actions.

I further award the landlord recovery of the filing fee paid for this application.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed to the landlord.

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

Rent: June 2015	\$ 650.00
Rent: July 2015	900.00
Loss of Rent: August 2015	900.00
Loss of Rent: September 2015	900.00
Loss of Rent: October 1 – 10, 2015	290.00
Filing fee	50.00

Less: security deposit	<u>(450.00)</u>
Monetary Order	\$3,240.00

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as necessary.

Conclusion

The landlord has been provided an Order of Possession to serve in the event the tenants have not already vacated the rental unit. The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$3,240.00 to serve and enforce upon the tenants.

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 07, 2015

Residential Tenancy Branch

