



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with a landlord's amended application for an Order of Possession for unpaid rent and cause; and a Monetary Order for unpaid rent, loss of rent, damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit. The tenant did not appear at the hearing. The landlord submitted that she sent her original Application and hearing documents to the tenant via registered mail on August 7, 2015 at the rental unit address and the amended application and evidence to the tenant at the rental unit via registered mail sent on August 10, 2015. The landlord testified that both registered mail packages were returned as unclaimed. The landlord testified that the tenant continues to reside at the rental unit. The landlord provided a copy of the registered mail envelopes which included including tracking numbers that were returned to her as proof of service.

Section 90 of the Act deems a person to have received documents five days after mailing even if a person refuses to accept or pick up their mail. I was satisfied the landlord sent the hearing documents, including the amended application and evidence, to the tenant in a manner that complies with the Act and I found him to be deemed served with the hearing documents five days after mailing. Accordingly, I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to recover the amounts claimed for rent, unpaid rent and an expired building permit from the tenant?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy commenced in October 2010 under an oral agreement and the landlord collected a \$400.00 security deposit. The tenant is required to pay rent of \$900.00 on the 1st day of every month. The rental unit is a basement suite that the City considers to be an "illegal secondary

suite” and in violation of the City’s by-laws. The upper suite in the house is also tenanted under a separate tenancy agreement.

The landlord submitted that as a result of the tenant’s report of an illegal suite to the City a by-law officer inspected the residential premises and determined that the rental unit is an illegal secondary suite which prompted the City to issue a notice to the landlord. In response to that first notice from the City the landlord issued a 1 Month Notice to End Tenancy for Cause to the tenant on May 5, 2015 and obtained a building permit to decommission the basement suite. The tenant disputed that 1 Month Notice and the parties participated in a dispute resolution proceeding on June 17, 2015 (the file numbers are provided on the cover page of this decision). That 1 Month Notice was cancelled by the Arbitrator as the City had issued a letter to the landlord outlining options to bring the building into compliance and had not specifically ordered the landlord to decommission the rental unit and evict the tenant. The Arbitrator hearing that case did; however, record that the tenant acknowledged that he had not paid any rent for June 2015 and the Arbitrator ordered him to pay rent and issued a Monetary Order to the landlord for the unpaid rent in the amount of \$900.00.

After that hearing, the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on June 23, 2015 indicating the rent that was due on June 1, 2015 was outstanding. The tenant did not pay the outstanding rent. On June 29, 2015 the landlord served the tenant with the Monetary Order issued by Arbitrator and the tenant still did not pay the outstanding rent.

On June 30, 2015, the landlord received a Final Notice from the City whereby she was ordered to either evict the tenant or decommission the basement suite and require the tenant to share a kitchen with the upper suite tenants. A copy of the Final Notice was also served upon the tenant that day by a City by-law officer. The landlord also personally served the tenant with another 1 Month Notice to End Tenancy for Cause on June 30, 2015 with a stated effective date of August 1, 2015. The 1 Month Notice indicates the reason for ending the tenancy is “Rental unit/site must be vacated to comply with government order”.

The tenant did not pay rent that was due on July 1, 2015 and on July 2, 2015 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant’s door indicating rent of \$1,800.00 was outstanding as of July 1, 2015. The tenant did not pay the outstanding rent after the 10 Day Notice was posted.

The tenant submitted an Application for Dispute Resolution on July 3, 2015 indicating he wished to dispute a 10 Day Notice and a 1 Month Notice; however, the tenant did not pick up his hearing package by July 22, 2015 and the Residential Tenancy Branch considered his Application abandoned.

The landlord testified that the tenant continues to occupy the rental unit and has not paid any rent since May 2015. The landlord seeks an Order of Possession as soon as possible. The

landlord already has a Monetary Order for June 2015 rent and seeks a Monetary Order for the unpaid and/or loss of rent for July 2015 through October 2015.

In addition to the unpaid and/or loss of rent, the landlord seeks compensation of \$175.00 from the tenant for the cost of a building permit that expired. The landlord explained that she obtained a building permit in early May 2015 so as to decommission the basement suite; however, she was unable to proceed with efforts to decommission the suite because the tenant had filed to dispute the May 5, 2015 1 Month Notice. The landlord submitted that the building permits expire after 4 weeks and now she will have to purchase another one to decommission the basement suite.

Documentary evidence provided by the landlord included copies of: the 10 Day Notices served on June 23, 2015 and July 2, 2015; the 1 Month Notice served on June 30, 2015; signed Proof of Services for each of the subject Notices to End Tenancy; the Monetary Order issued on June 19, 2015; the Final Notice from the City dated June 30, 2015; the building permit obtained on May 5, 2015; written submissions of the landlord as to the timeline of events; and, the registered mail envelopes that were sent to the tenant and returned to sender.

Analysis

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

I accept the undisputed evidence before me that the tenant was required to pay rent of \$900.00 on the 1st day of every month pursuant to the terms of his tenancy agreement.

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 10 Day 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 10 Day Notice.

The landlord submitted undisputed evidence that the tenant failed to pay rent for June and July 2015. The landlord provided undisputed evidence that she served the tenant with two 10 Day Notices: one in person on June 23, 2015 with respect to outstanding rent for June 2015 and the second posted on the tenant's door on July 2, 2015 to demand rent for June and July 2015. The tenant submitted an Application for Dispute Resolution on July 3, 2015 indicating he was seeking to cancel a 10 Day Notice; however, in failing to pick up the hearing package and serve it upon the landlord I find the tenant failed to effectively commence a proceeding to dispute the 10 Day Notice(s) pursuant to section 59(3) of the Act which provides: "a person who makes an

application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.” Accordingly, I consider the 10 Day Notice(s) to be undisputed. Therefore, I find the tenant is conclusively presumed to have accepted that the tenancy would end for unpaid rent pursuant to section 46(5) of the Act.

Although two 10 Day Notices were served upon the tenant and not effectively disputed, in determining the date the tenancy ended I have given the tenant the benefit of the last served 10 Day Notice. Since the last served 10 Day Notice was posted on the tenant’s door on July 2, 2015 it is deemed to have been received by the tenant three days later pursuant to section 90 of the Act and the effective date changes to read July 15, 2015 pursuant to section 53 of the Act. Therefore, I find the tenancy ended for unpaid rent on July 15, 2015 and the landlord is entitled to regain possession of the rental unit. Provided to the landlord is an Order of Possession effective two (2) days after service upon the tenant.

As I have found the tenancy ended on July 15, 2015 for unpaid rent I find it unnecessary to further consider enforceability of the 1 Month Notice that was served on June 30, 2015.

With respect to the landlord’s monetary claims, I provide the following findings and reasons.

The landlord requested a Monetary Order for unpaid rent for July 2015 and I award the landlord \$900.00 as requested as I am satisfied the tenant failed to pay rent for July 2015 which he was required to do because his tenancy was still in effect when rent was due on July 1, 2015.

Since the tenant has continued to occupy the rental unit and has violated the Act by failing to vacate the rental unit by the effective date of the 10 Day Notice I find the tenant’s actions have caused the landlord to incur loss of rent for the months of August 2015, September 2015 and October 2015. Therefore, I further award the landlord loss of rent for those months in the amount of \$900.00 for each month.

The landlord’s request to recover the cost of the expired building permit is dismissed. In order to establish entitlement to compensation for this amount from the tenant the landlord must demonstrate that the loss is a result of the tenant’s violation of the Act, regulations or tenancy agreement. The landlord submitted that the building permit expired because the tenant disputed the previous 1 Month Notice; however, disputing a Notice to End Tenancy is a right provided to tenants under the Act and pursuing that right would not be a violation of the Act. Presumably, the landlord may have waited to see if the tenant would dispute the Notice to End Tenancy before acquiring the building permit. Nevertheless, the building permit was required because the landlord had an illegal basement suite which is the landlord’s burden to rectify at the landlord’s expense.

I authorize the landlord to retain the tenant’s security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord recovery of the filing fee paid for this application.

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

Rent: July 2015	\$ 900.00
Loss of Rent: August 2015 - October 2015	2,700.00
Filing fee	50.00
Less: security deposit	<u>(400.00)</u>
Monetary Order	\$3,250.00

To enforce the Monetary Order it must be served upon the tenant and it may be enforced in Provincial Court (Small Claims) as an order of the court.

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 \$3,250.00 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: October 08, 2015

Residential Tenancy Branch

