



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL MANAGMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant's security deposit and to recover the filing fee from the Tenant.

Preliminary Issues

Two agents for the Landlord appeared for the hearing and provided affirmed testimony during the hearing and a copy of the notice to end tenancy prior to the hearing. There was no appearance for the Tenant during the 17 minute duration of the hearing. As a result, I turned my mind to the service of the documents for this hearing by the Landlord.

The Landlord's agents testified that the Tenant was served a copy of the Application and the Notice of Hearing documents by registered mail to the rental unit on September 13, 2015. This was done pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The Landlord provided the Canada Post tracking receipt as evidence to verify this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord's agents, I find the Tenant was deemed served with the required documents on September 18, 2015 pursuant to the Act.

The Landlord's agents requested to amend the Application to increase the monetary claim to include unpaid rent for months that had elapsed after the Application was made. As the Tenant would have been aware of these outstanding unpaid rent

amounts, I allowed the Landlord's agents to amend the Application for the increased amount to be considered in this hearing from \$2,250.00 to \$3,750.00.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord's agents testified that this tenancy started on March 1, 2014 for a fixed term of 12 months which then continued on a month to month basis thereafter. The Tenant paid the Landlord a security deposit of \$375.00 on February 26, 2014 which the Landlord still retains. Rent is payable in this tenancy in the amount of \$750.00 on the first day of each month.

The Landlord's agents testified that the Tenant failed to pay rent for May and August 2015. As a result, they served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on August 6, 2015 by attaching it to the Tenant's door. The Notice was provided into evidence and shows a vacancy date of August 16, 2015 due to \$1,500.00 in unpaid rent that was due on August 1, 2015.

The Landlords' agents testified that in addition, the Tenant has failed to pay rent for September, October and November 2015. Therefore they seek an Order of Possession and a Monetary Order in the amount of \$3,750.00.

Analysis

I have carefully considered the undisputed affirmed testimony and the documentary evidence before me in this decision as follows. Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have

accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the undisputed evidence that the Notice was served to the Tenant by attaching it to the rental unit door. Section 90(c) of the Act provides that a document served by attaching it to the door is deemed to have been received three days later. Therefore, I find the Tenant was deemed to have received the Notice on August 9, 2015 pursuant to the Act. As a result, the vacancy date on the Notice is corrected to August 19, 2015 pursuant to Section 53 of the Act.

There is no evidence before me that the Tenant either paid the outstanding rent on the Notice or made an Application to dispute it within the stipulated five day time limit provided by the Act. As a result, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected vacancy date of the Notice.

As the corrected vacancy date on the Notice has now passed, the Landlord is granted a two day Order of Possession. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

In relation to the Landlord's monetary claim for unpaid rent, I accept the Landlord's agents' undisputed oral and written evidence that the Tenant failed to pay rent for May, August, September, October and November 2015. Accordingly I award the Landlord **\$3,750.00** in unpaid rent.

As the Landlord has been successful in this claim, I also award the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$3,800.00**.

As the Landlord holds the Tenant's security deposit of \$375.00, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining balance of **\$3,425.00**. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court if the Tenant fails to make payment. Copies of both orders for service and enforcement are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has breached the Act by failing to pay rent. Therefore, the Landlord is granted a two day Order of Possession. The Landlord is allowed to keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$3.425.00.

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: November 16, 2015

Residential Tenancy Branch

