



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that he personally served the tenant with the hearing documents on October 21, 2015 at the residential property. In the absence of any evidence to the contrary, I accepted that the tenant was sufficiently served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Preliminary and Procedural Matters

The landlord orally requested during the hearing that the application be amended to include loss of rent for the months November and December 2015 as the tenant still occupies the rental unit. Since the tenant has had the benefit of use and occupancy of the rental unit while awaiting this hearing I found the landlord's request to be not prejudicial and I granted the landlord's request to amend the application.

The landlord also requested the application be amended to rectify an alleged error he made in completing the 10 Day Notice to End Tenancy for Unpaid Rent and the application when he indicated rent was outstanding for only two months when in fact it was three months. I denied this request for amendment as there was no indication on any of the documentation before me and served upon the tenant that unpaid rent was understated and that this understatement would be addressed during this proceeding.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to compensation for unpaid rent and loss of rent, as amended?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The landlord testified that the parties entered in to an oral agreement for a tenancy set to commence August 1, 2015 for the monthly rent of \$500.00 due on the first day of every month. The landlord claims that the tenant did not pay a security deposit and has paid not paid any rent.

The landlord testified that he personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on October 2, 2015 at the rental unit. The Notice indicates rent of \$1,000.00 was outstanding as of October 1, 2015 and a stated effective date of October 12, 2015. The landlord testified that after serving the tenant with the Notice she has not paid the outstanding rent and he confirmed that she is still living in the rental unit as of the day before this hearing.

Documentary evidence for this proceeding consisted of a copy of the 10 Day Notice.

In filing this application on October 14, 2015 the landlord indicated that the tenant had failed to pay rent for two months. During the hearing the landlord stated that this was an error and that she had actually failed to pay rent for three months at the time of filing. For the reasons given already in this decision, I declined to consider the landlord's claim that the Notice and application should be corrected to reflect three months of unpaid rent. However, I have considered the landlord's request to recover loss of rent incurred since the application was filed to reflect the tenant's continued occupation of the rental unit.

Analysis

Under section 26 of 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 under section 1. In this case, I accept the undisputed oral testimony that the tenant was required to pay monthly rent of \$500.00 on the first day of every month starting August 1, 2015.

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent under section 46 of the Act. 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 evidence before me that the landlord personally served the tenant with a 10 Day Notice in person on October 2, 2015 and that she did not pay the outstanding rent after being served with the Notice. Nor, did she file to dispute the Notice. Therefore, I find this tenancy

came to an end on the stated effective date of October 12, 2015 and I find the landlord entitled to an Order of Possession.

Provided to the landlord with this decision is an Order of Possession effective two (2) days after it is served upon the tenant.

Based upon the 10 Day Notice and the application that was filed and served in October 2015, I find the landlord entitled to recover unpaid rent of \$1,000.00. Since the tenant has not complied with the Act by vacating the rental unit by the effective date and continued to occupy the rental unit, I further award the landlord \$1,000.00 for loss of rent for the months of November and December 2015. I also award the landlord recovery of the \$50.00 filing fee paid for this application.

Since the landlord testified that the tenant did not pay a security deposit, I find his request to retain it to be moot.

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

Unpaid Rent as per 10 Day Notice issued October 2, 2015	\$1,000.00
Loss of Rent for November 2015 and December 2015	1,000.00
Filing fee	<u>50.00</u>
Monetary Order for landlord	\$2,050.00

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

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after it is served upon the tenant.

The landlord has been provided a Monetary Order in the sum of \$2,050.00 to serve and enforce upon the tenant.

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: December 15, 2015

Residential Tenancy Branch

