



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASTLE MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the 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 the tenant was notified of this proceeding by way of registered mail sent on January 6, 2016. The landlord provided a registered mail tracking number as proof of service and testified that the registered mail was successfully delivered to the tenant on January 7, 2016. I was satisfied 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 had named two respondents in filing this application and had sent hearing documents to both named respondents via registered mail; however, the tenancy agreement submitted as evidence named only one tenant and was signed by only one tenant. Also, the move-in inspection report identified and was signed by only one tenant and a Notice of Rent Increase identified only one tenant. The landlord explained that the second named respondent lives or lived in the rental unit with the tenant and is the tenant's mother who had authorized payment of the rent for the unit by way of a pre-authorized debit form. The landlord understands that the second named respondent may be deceased now based upon what the tenant told him. Based upon the tenancy agreement, move-in inspection report and Notice of Rent Increase that are before me, I was satisfied that there is one tenant who is obligated to pay rent for this rental unit under a tenancy agreement. Living in a rental unit or even paying rent on behalf of the tenant does not in itself create a tenancy agreement where one already exists. In the absence of a tenancy agreement signed by both named respondents or some other documentation to show that all parties agreed to add a second tenant to the tenancy agreement I was unsatisfied that the second named tenant is obligated to pay rent for this unit and I excluded the second named respondent as a party to this dispute.

I noted that the tenancy agreement and the move-in inspection report provided a different last name for the tenant than that appearing on the landlord's application, the Notice of Rent Increase, and the 10 Day Notice. The landlord explained that the tenant named in the tenancy agreement and the tenant named on the application and 10 Day Notice are the same person but that during the tenancy the tenant had notified that the landlord that he had a different last name. I amended the application to identify the tenant by both names: as it appears on the tenancy agreement and the landlord's application.

Finally, the landlord requested the application be amended to include loss of rent for the month of February 2016 since the tenant continues to occupy the rental unit. As the tenant has continued to benefit from continued occupation of the rental unit I found the landlord's request reasonable and non-prejudicial to the tenant. Therefore, I permitted the amendment.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent as requested?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

Pursuant to the written tenancy agreement before me, the tenancy commenced April 15, 1988 and the landlord collected a security deposit of \$182.50. At that time the monthly rent was set at \$365.00 and it was agreed that the monthly rent would be paid on the first day of each month. Over the years the rent has increased to its current amount of \$755.00 per month.

The monthly rent had been paid by way of pre-authorized debit; however, the payment for the months of November 2015 and December 2015 were returned. On December 9, 2015 the landlord's agent personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) indicating rent of \$755.00 was outstanding for November 2015 and \$755.00 was outstanding for December 2015. The Notice has a stated effective date of December 19, 2015. The tenant signed a Proof of Service document acknowledging receipt of the Notice at 5:45 p.m. on December 9, 2015. Despite receiving the Notice, the tenant did not pay the outstanding rent, did not file to dispute the Notice, and continues to occupy the rental unit. Nor has the tenant paid any monies for the months of January or February 2016.

The landlord seeks an Order of Possession and Monetary Order to recover unpaid and loss of rent for the months November 2015 through February 2016.

Documentary evidence provided by the landlord included copies of: the tenancy agreement; the move-in inspection report; a Notice of Rent Increase issued in 2013; the 10 Day Notice; the Proof of Service for the 10 Day Notice; and, reports showing the November 2015 and December 2015 pre-authorized payments of \$755.00 were returned.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

A tenant in receipt of a 10 Day Notice 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 unopposed evidence before me that the tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent on December 9, 2015. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenant is conclusively presumed to have accepted that the tenancy would end on December 19, 2015. Accordingly, I find that the tenancy has ended and the landlord is entitled to regain possession of the rental unit. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the unopposed evidence before me, I find the landlord is entitled to recover unpaid rent for November and December 2015 in the amount of \$755.00 for each month. Since the tenant did not vacate the rental unit as required and continued to occupy the rental unit I find the landlord further entitled to recover loss of rent from the tenant for the months of January 2016 and February 2016 in the amount of \$755.00 per month. Therefore, I grant the landlord's request to recover unpaid and or loss of rent for the months of November 2015 through February 2016 and I award the landlord \$3,020.00.

I authorize the landlord to retain the tenant's security deposit and accrued interest in partial satisfaction of the rent owed to the landlord. I calculate the accrued interest to be \$129.54. Accordingly, I find that the landlord is holding a total of \$312.04 for the security deposit and interest.

I also award the landlord recovery of the \$50.00 filing fee paid for this application.

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

Unpaid/Loss of Rent: November 2015 - February 2016	\$3,020.00
Filing fee	50.00
Less: security deposit and interest	<u>(312.04)</u>
Monetary Order for landlord	\$2,757.96

Conclusion

The tenancy has ended and 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 accrued interest and has been provided a Monetary Order for the balance of \$2,757.96 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: February 17, 2016

Residential Tenancy Branch

