



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SQUIRREL RESOURCES CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, 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, loss of rent and late fees. The tenant did not appear at the hearing. The landlord submitted a registered mail receipt, including tracking number, as proof the hearing documents were sent to the tenant at the rental unit address on January 11, 2016. The landlord testified that the tenant still resides at the rental unit. 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.

During the hearing the landlord requested that the monetary claim be amended as follows. The landlord requested that his request to retain the security deposit be withdrawn so that it remains in trust for the tenant. The landlord requested the claim for unpaid rent and late fees be reduced to reflect the balance on the ledger. I found both of these requests non-prejudicial to the tenant since the security deposit will remain in trust for the tenant and the monetary claim was being reduced which is beneficial to the tenant. Therefore, I amended the landlord's application accordingly.

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 and late fees as requested?

Background and Evidence

The tenancy started July 1, 2006 and the landlord collected a security deposit of \$370.00. The tenancy agreement provides that the tenant was required to pay rent of \$740.00 on the first day of every month. Over the years the rent has been increased by way of Notices of Rent Increase to its current amount of \$931.00 per month. The

tenancy agreement provides that late payments of rent are subject to an administrative fee of \$25.00.

The landlord submitted that the tenant started falling behind in rent in August 2015 and since then has made partial payments on various dates. To illustrate: the rent for August 2015 was not satisfied until August 27, 2015; the rent for September 2015 was satisfied by two payments made in October 2015; and the October 2015 rent was not satisfied until two payments were made in November 2015. Only \$3.00 of the November 2015 rent was satisfied and then the tenant failed to pay the December 2015 rent when the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on December 22, 2015 (the Notice). The Notice indicates rent of \$1,859.00 was payable as of December 1, 2015 and has a stated effective date of January 5, 2016.

The Notice was slid under the tenant's door on December 22, 2015 in the presence of a witness. The landlord testified that he spoke with the tenant about the Notice in the days that followed. The tenant did not file to dispute the Notice or pay the outstanding rent within five days. However, the tenant did present partial payments to the landlord as follows:

- January 4, 2016 a cheque in the amount of \$900.00, that cleared the bank.
- January 12, 2016 a cheque in the amount of \$450.00, that cleared the bank.
- January 30, 2016 a cheque in the amount of \$500.00 but the cheque was returned.
- February 15, 2016 a cheque in the amount of \$550.00 that has been deposited and is still in the process of clearing.

The landlord seeks an Order of Possession and a Monetary Order for the current balance outstanding. The landlord had originally applied for a Monetary Order of \$3,778.00 including unpaid and/or loss of rent up to and including February 2016 and late fees for August 2015 through January 2016; however, during the hearing the landlord submitted that the actual balance of rent and late fees that are currently outstanding is only \$2,521.00. This balance does not recognize the \$550.00 payment received on February 15, 2016 as it is uncertain if that cheque will clear; however, if it does, the landlord affirmed that he will deduct the payment from the Monetary Order and only enforce the remaining balance.

Documentary evidence provided by the landlord included copies of: the tenancy agreement; numerous Notices of Rent Increase; the 10 Day Notice; Proof of Service for the 10 Day Notice; and, a Monetary Order worksheet.

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 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 evidence before me that the landlord put a 10 Day Notice to End Tenancy for Unpaid Rent under the tenant's door on December 22, 2015. Section 88 of the Act, which provides the ways a document is to be served, does not permit a document to be slid under a door. However, section 71 of the Act provides me authority to deem a person sufficiently served even if the method of service was not compliant with section 88. Since the landlord confirmed that he had spoken with the tenant about the 10 Day Notice I was satisfied the tenant received the 10 Day Notice and I deem her served three days after it was slid under door, which is the same as if it had been posted on her door or put in her mail slot. Accordingly, I find the tenant deemed to be in receipt of the 10 Day Notice on December 25, 2015 and the effective date of January 5, 2016 that appears on the Notice is compliant with the Act.

Since the tenant did not pay all of the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on January 5, 2016 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the undisputed evidence before me, I am satisfied the landlord is entitled to recover unpaid and/or loss of rent from the tenant for the months up to and including February 2016. Upon review of the tenancy agreement, I am satisfied the tenancy agreement has a valid late fee clause and the landlord is entitled to charge late fees of \$25.00 for each month the rent is paid late, as requested. I accept the landlord's practice of applying payments to the oldest debt first as reasonable and commonly accepted practice. Therefore, I grant the landlord's request for a Monetary Order for the sum of \$2,521.00 plus \$50.00 for recovery of the filing fee paid for this application.

As noted previously, the above sum does not reflect the \$550.00 cheque that was received on February 15, 2016 since it had not yet cleared the bank as of the date of this hearing; however, if it clears then \$550.00 will be deducted from the Monetary Order and only the remaining balance shall be enforceable.

Finally, the security deposit remains in trust for the tenant, to be administered in accordance with the Act.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been provided a Monetary Order in the sum of \$2571.00 to serve and enforce as necessary.

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 18, 2016

Residential Tenancy Branch

