



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPM, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail actually received on March 7, 2016, the tenant did not appear.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, on what terms?
- Is the landlord entitled to a monetary order and, if so, on what terms?
- What order should be made with respect to the security deposit?

Background and Evidence

This one year fixed term tenancy commenced February 1, 2015 and has continued thereafter as a month-to-month tenancy. The monthly rent of \$600.00 is due on the first day of the month. The tenant paid a security deposit of \$300.00.

On February 3, 2016, the landlord issued and personally served a 10 Day Notice to End Tenancy for Non-Payment of Rent. The landlord testified that the tenant has not served him with an application disputing the notice nor has he paid any rent since being served with the Notice to End Tenancy. The landlord testified that the arrears now total \$1800.00.

Analysis

The landlord failed to complete two portions of the notice to end tenancy at the bottom of the page: the address of the rental unit and the date by which the tenant must move out.

Section 68(1) of the *Residential Tenancy Act* allows an arbitrator to amend a notice to end tenancy that does not comply with section 53 if satisfied that:

- the person receiving the notice knew, or should have known, the information that was omitted from the notice; and,
- it is reasonable in the circumstances to do so.

The tenant lives at the unit in regards to which the notice was served so the tenant would have known, or should have known, the address that was omitted from the lower portion of the notice.

The notice states that the tenant has ten days to move out of the unit. Even if the effective date of the notice has not been specified the tenant can count ten days from the date he received the notice to calculate the effective date. Once again this is information that the tenant would have known, or should have known.

Accordingly, I amend the Notice to End Tenancy to add the address of the rental unit and to specify that the effective date of the notice is February 13, 2016.

I find that the tenant was served with a 10 Day Notice to End Tenancy for Non-Payment of Rent. The tenant has not paid the outstanding rent and did not file an application to dispute the notice so is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on these facts, I find that the landlord is entitled to an order of possession effective two days after service on the tenant.

With regard to the claim for a monetary order, the landlord's Application for Dispute Resolution claimed \$525.00 plus the filing fee of \$100.00. His application did not include a claim for anticipated loss of rent. Although the arrears of rent as of the date of the hearing may be in excess of that amount I cannot grant a monetary order for an amount greater than that claimed on the Application for Dispute Resolution. I will grant a monetary order for arrears of rent in the amount of \$525.00. The landlord will have to file and serve a new Application for Dispute Resolution for any arrears of rent over and above that amount.

Conclusion

- a. An order of possession effective two days after service is granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
- b. I find that the landlord has established a total monetary claim of \$625.00 comprised of arrears of rent in the amount of \$525.00 and the \$100.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$300.00 in partial satisfaction of the claim and I grant the landlord an

order under section 67 for the balance due of \$325.00. If necessary, this order may be filed in the Provincial Court and enforced as an order of that court.

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: April 13, 2016

Residential Tenancy Branch