



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on March 11, 2016, no one for the tenant attended the hearing. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participant who joined the call was the landlord. The landlord testified that the tenant was served on that date and in that manner and has provided a copy of a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt showing that the registered mail was addressed to the tenant. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on July 1, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$700.00 per month is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that the tenant fell into arrears of rent, and on March 2, 2016 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy of the notice has been provided and it is dated March 2, 2016 and contains an effective date of vacancy of March 15, 2016 for unpaid rent in the amount of \$1,400.00 that was due on March 1, 2016. The tenant has not paid any rent for February, March or April, 2016 and is now in arrears the sum of \$2,100.00.

The landlord has not been served with an application for dispute resolution by the tenant disputing the notice, and the landlord claims an Order of Possession, a monetary order for unpaid rent in the amount of \$2,100.00, recovery of the \$100.00 filing fee, and an order permitting the landlord to keep the \$350.00 security deposit in partial satisfaction.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to dispute it. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, I am satisfied that the tenant was served with the notice on March 2, 2016 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or March 5, 2016. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The tenant did not pay the rent, and the landlord testified that the tenant has not served the landlord with an application for dispute resolution disputing the notice. I have no such application before me from the tenant, and therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled under the *Act* to an Order of Possession. Since the effective date of vacancy has passed, I grant the order on 2 days notice to the tenant.

With respect to the monetary claim, I accept the undisputed testimony of the landlord and I am satisfied that the tenant has failed to pay rent for the months of February,

March and April, 2016 and the landlord has established a claim in the amount of \$2,100.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$350.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord for the difference in the amount of \$1,850.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the \$350.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,850.00.

These orders are final and binding and may be enforced.

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 22, 2016

Residential Tenancy Branch