



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEWIS APT.[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD

Introduction

This participatory hearing was scheduled pursuant to a decision issued by Adjudicator Hayes in response to the landlord's application for an Order of Possession and Monetary Order for unpaid rent under the Direct Request procedure. At this hearing, the landlords appeared; however, the tenant did not. The landlord testified that the Notice of Hearing and Interim Decision of Adjudicator Hayes were given to an adult occupant residing in the rental unit with the tenant on June 3, 2016. The occupant, referred to by initials BC, stated he would give the documents to the tenant when he returned home from work. The landlord testified that attempts were made to serve the tenant in person prior to June 3, 2016 but the tenant had not been seen at the property by the landlord which lead the landlord to leave the hearing documents with the adult occupant residing in the rental unit.

In the decision of Adjudicator Hayes, the landlord was ordered to serve the tenant with the Notice of Hearing and the Interim Decision in a manner that complies with section 89 of the Act. Section 89(2) provides that an application for an Order of Possession may be served upon an adult occupant apparently residing with the tenant in the rental unit. Accordingly, I am satisfied that the landlord complied with section 89(2) of the Act with respect to seeking an Order of Possession.

As for monetary claims, section 89(1) provides that the landlord was required to serve the tenant personally or by registered mail. Service that occurred on June 3, 2016 did not meet this requirement; however, I heard that the landlord's Application for Dispute Resolution by Direct Request, which included the landlord's monetary claim, had been served personally upon the tenant at the landlord's office on May 17, 2016. As such, I was satisfied that the tenant was aware of the landlord's monetary claim against him for unpaid rent for May 2016. Having been satisfied the tenant was aware of the landlord's monetary claim and coupled with service of the hearing documents that complied with section 89(2) I deemed the tenant sufficiently served for purposes of seeking a Monetary Order pursuant to the authority afforded me under section 71 of the Act. Accordingly, I have considered the landlord's monetary claim by way of this hearing.

During the hearing, the landlord requested the application be amended to seek authorization to retain the security deposit in partial satisfaction of the unpaid rent for May 2016. Since this request reduces the Monetary Order that would be provided to the landlord I found this request non-prejudicial to the tenant and I amended the 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 rent?
3. Is the landlord authorized to retain the security deposit in partial satisfaction of the unpaid rent?

Background and Evidence

The tenancy commenced April 1, 2016 and the tenant paid a security deposit of \$280.00 on March 31, 2016. The tenant was required to pay rent of \$560.00 on a month to month basis. The written tenancy agreement did not provide for the date rent is due, which is the reason the landlord's application was set for a participatory hearing. During the hearing, the manager testified that rent was to be paid on the first day of every month.

I heard that the tenant failed to pay rent for May 2016 and on May 5, 2016 the tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by the owner of the property in the presence of the manager. After serving the tenant with the 10 Day notice the tenant made promises to pay the outstanding rent but never did. Nor, did the tenant file to dispute the 10 Day Notice. The 10 Day Notice indicates rent of \$560.00 was outstanding as of May 1, 2015 and has a stated effective date of May 15, 2016.

The manager testified that rent for the month of June 2016 was received on behalf of the tenant directly from the Ministry. The landlord deposited the payment since possession of the unit has not yet been returned to the landlord and the hearing was scheduled for this date. In recognition of the payment, the owner stated he is willing to permit occupancy of the rental unit until June 30, 2016 and requested an Order of Possession with an effective date of June 30, 2016.

The landlord seeks recovery of the unpaid rent for May 2016 of \$560.00 by way of a Monetary Order and authorization to retain the security deposit.

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.

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 unopposed evidence before me that the tenant was required to pay rent of \$560.00 on May 1, 2016 and failed to do so. I also accept that the tenant was served with the 10 Day Notice that has been presented to me as evidence, in person, on May 5, 2016. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenant conclusively presumed to have accepted that the tenancy would come to an end. Therefore, I find this tenancy has legally come to an end.

In recognition of the payment the landlord received for June 2016 and the landlord's willingness to permit occupancy of the unit until June 30, 2016, I provide the landlord an Order of Possession that is effective at 1:00 p.m. on June 30, 2016.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for May 2016 in the amount of \$560.00. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord, as requested. Therefore, the landlord is provided a Monetary Order for the balance of rent outstanding for May 2016 in the amount of \$280.00 to serve and enforce upon the tenant.

Conclusion

The landlord has been provided an Order of Possession effective at 1:00 p.m. on June 30, 2016. The landlord has been authorized to retain the tenant's security deposit and

has been provided a Monetary Order for the balance of \$280.00 in rent that is outstanding for May 2016.

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: June 16, 2016

Residential Tenancy Branch