



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROVISIO INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agent (the landlord) attended the conference call hearing, gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of the hearing documents and evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the tenant's security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on March 01, 2013 with the former landlord. This landlord became the landlord in September, 2014. Rent for this unit is \$820.00 per month due on the 1st of each month. The tenant paid a security deposit of \$ 400.00 on February 26, 2013.

The landlord testified that the tenant failed to pay all the rent due on June 01, 2016 leaving an unpaid balance of \$320.00. The tenant failed to pay rent for July of \$820.00 on the day it was due. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on July 12, 2016. This was posted on the tenant's door and was deemed to have been served three days after. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on July 25, 2016. The tenant did not pay the outstanding rent or file an application to dispute the Notice within the five allowable days but did pay \$500.00 on July 18, 2016 and \$365.00 on July 29, 2016. Since that time the tenant has failed to pay rent for August, 2016 of \$820.00 and for September, 2016 of \$820.00. The amount of unpaid rent is now \$275.00 for July and \$1,640.00 for August and September.

The landlord seeks to amend their application to include unpaid rent for September, 2016.

The landlord has applied to retain the tenant's security deposit of \$400.00 in partial payment of the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible and to recover the filing fee of \$100.00 from the tenant.

The tenant does not dispute the landlord's claim to recover unpaid rent for July, August and September, 2016 of \$1,915.00. The tenant testified that she had a roommate in the unit who was supposed to pay the rent while the tenant was away but failed to do so. The tenant now understands that she is responsible for the rent as her roommate was

not on the tenancy agreement. The tenant also understands that the landlord is entitled to an Order of Possession.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the evidence before me that there is outstanding rent for July of \$275.00.00 and outstanding rent for August and September of \$1,640.00. I have allowed the landlord to amend their application to include September's rent as the tenant remains in possession of the rental unit and should be aware that rent is due for September. Consequently, it is my decision that the landlord is entitled to recover these amounts to a total of **\$1,915.00**.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$400.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$100.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$1,915.00
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Filing fee	\$100.00
Less security deposit and accrued interest	(-\$400.00)
Total amount due to the landlord	\$1,615.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door it was deemed served three days after posting on July 15, 2016. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective two days after service pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,615.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenant; if the tenant fails to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective **two days after service** upon the tenant. This Order must be served on the tenant; if the tenant fails to comply with the Order, the Order may be filed in the Supreme 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: September 28, 2016

Residential Tenancy Branch

