



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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 and/or loss of rent; and, authorization to retain the security deposit, as amended. The tenant did not appear at the hearing. The landlord testified that he sent the hearing documents to the tenant via registered mail sent on August 15, 2016. The landlord provided a copy of the registered mail receipt, including tracking number, and a search of the tracking number showed that the registered mail was received by the tenant on August 17, 2016. I was satisfied the tenant was 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 to include loss of rent for the months of September 2016 and October 2016 since the tenant continues to occupy the rental unit. The landlord also stated that the security deposit had been applied to unpaid rent in the past but it was not done in writing and a ledger was not presented to me so out of an abundance of caution the landlord requested that I authorize him to retain the security deposit in partial satisfaction of unpaid rent. I considered both of these requests to be non-prejudicial or unreasonable to the tenant considering the tenant has continued to benefit from possession of the rental unit and authorizing the landlord to retain the security deposit will decrease any Monetary Order provided to the landlord. Therefore, I have permitted the application to be amended as requested.

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?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy started in September 2003 and at that time the monthly rent was \$750.00 due on the first day of every month, plus the tenant was required to pay 60% of the utilities. A number of Notices of Rent Increase were issued since then bringing the current monthly rent to \$925.00 and the tenant's utility obligation was reduced to 50%.

The landlord submitted that the tenant was often late or made partial payments and that he applied payments to rental arrears and outstanding utilities first. The landlord testified that the last month for which he receiving any rent from the tenant was June 2016. The landlord testified that \$370.06 was outstanding for June 2016, \$925.00 for July 2016 and \$925.00 for August 2016 when he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities in person on August 4, 2016. The 10 Day Notice indicates rent of \$2,220.06 was outstanding as of August 1, 2016 and has a stated effective date of August 14, 2016. I heard that after serving the tenant with the 10 Day Notice the tenant has not paid the outstanding rent and has not paid anything for September 2016 or October 2016 and continues to occupy the rental unit.

The landlord seeks an Order of Possession effective as soon as possible. The landlord seeks a Monetary Order for the unpaid rent reflected on the 10 Day Notice plus loss of rent for September 2016 and October 2016 since the tenant still occupies the rental unit.

As evidence for this proceeding, the landlord provided copies of the tenancy agreement; Notices of Rent Increase; and, the 10 Day Notice to End Tenancy.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. If 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 landlord personally served a 10 Day Notice upon the tenant on August 4, 2016 and the tenant did not pay the outstanding rent or file to dispute the 10 Day Notice. Accordingly, I find the tenant is conclusively presumed to have accepted that the tenancy would end on August 14, 2016. Since the tenant remains in possession of the rental unit despite the end of the tenancy I find the landlord entitled to an Order of Possession. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the unopposed evidence before me, I find the landlord entitled to recover unpaid rent of \$2,220.06 as seen on the 10 Day Notice. Since the tenant continues to occupy the rental unit, I further find the landlord entitled to recover loss of rent for the month of September 2016 in the amount of \$925.00 and I award the landlord loss of rent for one-half of October 2016

in the amount of \$462.50. Should the landlord suffer further loss of rent due to the actions of the tenant, the landlord is permitted to file another Application for Dispute Resolution.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid rent per 10 Day Notice	\$2,220.06
Loss of Rent for September 2016	925.00
Loss of Rent for October 1 – 15, 2016	462.50
Filing fee	100.00
Less: security deposit	<u>(375.00)</u>
Monetary Order	\$3,332.56

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$3,332.56 to serve and enforce upon the tenant.

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: October 06, 2016

Residential Tenancy Branch