



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with a landlord's application, as amended, for an Order of Possession and Monetary Order for unpaid and loss of rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord had submitted a second Amendment seeking to correct the rental unit address on the application. Both parties were in agreement as to the correct street number for the rental unit and I have 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 and loss of rent?

Background and Evidence

The parties entered into an oral tenancy agreement for a tenancy that started in September 2015. The tenant did not pay a security deposit. The tenant was required to pay rent of \$1,000.00 on the first day of every month.

The tenant did not pay rent for August 2016 or September 2016 and on September 5, 2016 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit (the 10 Day Notice). The 10 Day Notice indicates \$1,000.00 was due on August 1, 2016 and has a stated effective date of September 16, 2016. The tenant did not pay the outstanding rent or file to dispute the 10 Day Notice. The tenant continues to occupy the rental unit and has not paid any rent since July 2016.

The tenant acknowledged that she has not paid any rent for August 2016 through November 2016. The tenant explained that in June 2016 the rental unit was broken into and she was robbed and that she is waiting for the police to solve the case so that she can pay the rent. The tenant apparently had a belief that if the police solved the case she would recover her stolen possessions and money. The tenant also stated that she is working to save up to pay the debt she owes to the landlord. The tenant requested that she be permitted to occupy the rental unit until December 15, 2016 when her parents can provide her with accommodation.

The landlord stated that he was willing to permit the tenant occupancy up until December 1, 2016.

Analysis

Section 1 of the Act defines a tenancy agreement to include those entered into orally. Accordingly, I am satisfied that the tenant was required to pay the monthly rent of \$1,000.00. Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold rent. The Act provides very limited and specific circumstances when a tenant may legally withhold rent and the robbery of the tenant's possessions or inability to pay rent is not a legal basis to withhold rent that is due to the landlord. Accordingly, I find the tenant remained obligated to pay rent for August 2016 and September 2016.

Where a tenant does not pay rent the landlord is at liberty to issue 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 undisputed evidence before me that the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the rental unit door on September 5, 2016. Under section 90 of the Act the tenant is deemed to have received the Notice three days after posting. Accordingly, the effective date of the Notice automatically changes to comply and reads September 18, 2016 pursuant to sections 46, 53 and 90 of the Act

Since the tenant did not pay the outstanding rent or dispute the 10 Day Notice within five days of receiving the Notice I find the tenancy ended on September 18, 2016 and the landlord is entitled to regain possession of the rental unit. I find the landlord's willingness to permit the tenant occupancy until December 1, 2016, despite four months without rent, to be very reasonable. Therefore, I provided the landlord with an Order of Possession that is effective on December 1, 2016 as requested by the landlord.

Based upon the unopposed evidence before me, I find the landlord entitled to recover unpaid rent for August 2016 and September 2016 as well as loss of rent for the months of October 2016 and November 2016 since the tenant has continued to occupy the rental unit, for a total award of \$4,000.00. I further award the landlord recovery of the \$100.00 filing fee paid for this application. Accordingly, I provide the landlord with a Monetary Order in the total sum of \$4,100.00 to serve and enforce upon the tenant.

Conclusion

The landlord has been provided an Order of Possession with an effective date of December 1, 2016 to serve and enforce upon the tenant.

The landlord has been provided a Monetary Order in the total sum of \$4,100.00 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: November 17, 2016

Residential Tenancy Branch