



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMBER PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on December 16, 2016. The Landlord filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities; to keep all or part of the security and/or pet deposit; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the agent for the Landlord who gave affirmed testimony. No one was in attendance on behalf of the Tenant. The Landlord testified that she personally served the Tenant with copies of their application for Dispute Resolution, the hearing documents, and their evidence on December 17, 2016. The Landlord submitted the Tenant signed receipt of the application and hearing documents.

Section 89(1)(a) of the *Act* stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to a landlord, may be given to the respondent by leaving a copy with the person.

Based on the above, I accepted the affirmed submissions of the Landlord and find that each Tenant was sufficiently served notice of this proceeding in accordance with section 89(1)(a) of the *Act*. As such, I proceeded with the hearing in absence of the Tenant.

On December 19, 2016 the Landlord submitted 14 pages of evidence to the Residential Tenancy Branch (RTB). That evidence included, in part, copies of the 2 page 10 Day Notice; the 2 page Proof of Service document; and the tenancy agreement.

Issue(s) to be Decided

- 1) Has the Landlord proven entitlement to an Order of Possession?
- 2) Has the Landlord proven entitlement to a monetary order?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a written one year fixed term tenancy agreement that began on July 1, 2016. As per that agreement rent of \$960.00 was required to be paid on or before the last day of each month. On July 1, 2016 the Tenant paid \$480.00 as the security deposit.

The Landlord testified that the Tenant had entered into a pre-authorized payment (PAP) program through their bank which processed the rent payments on the first of each month not the last day of each month.

The Landlords stated that when the Tenant's December PAP was returned from the bank as non-sufficient funds (NSF) a 10 Day Notice was posted to the Tenant's door on December 7, 2016. The 10 Day Notice listed \$960.00 as the unpaid rent that was due December 1, 2016 and an effective date of December 17, 2016.

The Landlord testified the Tenant continues to occupy the rental unit and has not paid rent the \$960.00 December 2016 or the \$960.00 January 2017. She now seeks a Monetary Order to recover the \$1,920.00 unpaid rent and an Order of Possession.

Upon review of the Details of Dispute the Landlord wrote: "The tenant haven't paid the rent for December till today. And she repeated pay rent late. Also we request for Jan.'s rent." The Landlord confirmed that English was her second language and that she understood her aforementioned statement meant that the Tenant had not paid the outstanding December rent as of the day she was filing her application. She confirmed December and January rent remained unpaid.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

Section 7(2) of the *Act* stipulates that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by posting it to the person's door is deemed to have been received three days after it is posted.

Subsection (2) of Section 53 states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

In this case the Tenant was deemed to have received the 10 Day Notice on December 10, 2016, three days after it was posted to the door, pursuant to section 90 of the *Act*. Therefore, the effective date of the Notice automatically corrects to December 20, 2016, pursuant to section 53(2) of the *Act*.

Section 55(2)(b) of the *Act* provides that a landlord may request an order of possession of a rental unit if a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **December 20, 2016**. Accordingly, I grant the Landlord's request and issue them an **Order of Possession effective 2 Days upon service** to the Tenant, pursuant to section 55(2)(b) of the *Act*. In the event that the Tenant does not comply with this Order it may be enforced through Supreme Court.

Section 26 of the *Act* stipulates, in part, that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The undisputed evidence was the Tenant had not paid the \$960.00 rent required for December 2016, in accordance with section 26 of the *Act*. As per the aforementioned, I

find the Landlord has met the burden of proof and I award them unpaid rent for December 2016, in the amount of **\$960.00**, pursuant to section 67 of the *Act*.

As noted above, this tenancy ended **December 20, 2016**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for loss of rent and use and occupancy of the rental unit for January 2017, not rent. I approve the Landlord's request to consider awarding them compensation for January 2017 given the delay from the time the Landlord filed their application on December 16, 2016 to the January 4, 2017 hearing date.

It is reasonable to conclude that the Tenant would be expected to pay for their occupation of the rental unit until such time as the Landlord regains possession. As of this hearing the Tenant continued to occupy the rental unit and the Landlord will not regain possession until after service of the Order of Possession. Once the Landlord regains possession they are required to mitigate there losses by trying to re-rent the unit for as soon as possible, pursuant to section 7(2) of the *Act*, as listed above. Therefore, I conclude the Landlord is entitled to payment for use and occupancy and any loss of rent for the period of January 1, 2017 to January 14, 2017 in the amount of **\$480.00** (1/2 of \$960.00), pursuant to section 67 of the *Act*. If the Landlord suffers additional losses relating to this tenancy the Landlord is at liberty to file another application for Dispute Resolution to seek recovery of those losses.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director. The Landlord been successful with their application; therefore I award recovery of the **\$100.00** filing fee.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$480.00 deposit since July 1, 2016.

This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid December 2016 Rent	\$ 960.00
Use and Occupancy Jan 1-14, 2017	480.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$1,540.00
LESS: Security Deposit \$480.00 + Interest 0.00	<u>- 480.00</u>
Offset amount due to the Landlord	<u>\$1,060.00</u>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$1,060.00 forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$1,060.00** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlord was successful with their application and was awarded an Order of Possession effective 2 days upon service and a Monetary Award of \$1,540.00. That award was offset against the Tenant's security deposit leaving a balance owed to the Landlord of **\$1,060.00**.

This decision is final, legally binding, and 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: January 04, 2017

Residential Tenancy Branch