



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This participatory hearing was scheduled to deal with a landlord's application for an Order of Possession and a Monetary Order for unpaid rent for February 2017 pursuant to an Interim Decision issued on February 23, 2017 by an Adjudicator reviewing the landlord's application under the Direct Request procedure. The landlord appeared at the hearing but the tenant did not.

The landlord was required to notify the tenant of this hearing in accordance with section 89 of the Act. The landlord testified that he provided the tenant with the required documents via registered mail sent to the tenant at the rental unit on February 24, 2017. The landlord orally provided a registered mail tracking number as proof of service. I was satisfied the landlord duly served the tenant with notification of this hearing and I continued to hear from the landlord without the tenant present.

The landlord informed me that he filed another Application for Dispute Resolution by Direct Request to deal with the landlord's request for an Order of Possession and Monetary Order for unpaid rent for March 2017. The landlord provided the file number to me and I confirmed the information he provided to be accurate. The Application for Dispute Resolution by Direct Request filed in March 2017 was sent to the tenant via registered mail on March 17, 2017. The landlord had provided a registered mail receipt as proof of service. Since the Direct Request procedure is a non-participatory hearing based upon written submissions of the landlord only, and the circumstances and remedies sought are similar, I was of the view that it would not be prejudicial to the tenant for the landlord's two applications to be joined together. Accordingly, I ordered the two applications be joined pursuant to Rule 2.10 of the Rules of Procedure and this decision deals with both Application for Dispute Resolution filed by the landlord against the tenant.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?

Background and Evidence

The tenancy started on April 1, 2012 and is on a month to month basis. The tenant paid a security deposit of \$650.00 and is required to pay rent of \$1,300.00 on the first day of every month. The tenant failed to pay rent for February 2017 and on February 3, 2017 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on the door of the rental unit. The 10 Day Notice indicates rent of \$1,300.00 was outstanding as of February 1, 2017 and has a stated effective date of February 15, 2017. The tenant did not pay the outstanding rent or file to dispute the 10 Day Notice.

The tenant remained in possession of the rental unit and did not pay any money toward March 2017 rent. The landlord posted another 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on March 2, 2017 in the presence of a witness. This 10 Day Notice indicates rent of \$1,300.00 was outstanding as of March 1, 2017 and has a stated effective date of March 15, 2017. The tenant did not pay the outstanding rent or file to dispute this 10 Day Notice.

The landlord seeks an Order of Possession and Monetary Order for unpaid and/or loss of rent for the months of February 2017 and March 2017 in the sum of \$2,600.00. The landlord confirmed that the security deposit shall remain in trust to be administered in accordance with the Act.

Documentary evidence provided for my review includes: the tenancy agreement; the 10 Day Notice posted on February 3, 2017; the 10 Day Notice posted on March 2, 2017; a signed Proof of Service for serve of each of the 10 Day Notices; and registered mail receipts.

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 \$1,300.00 on the first day of every month and the tenant failed to do so for the month of February 2017. I further accept that the tenant remained in possession of the rental unit and did not pay any monies to the landlord for the month of March 2017.

I further accept the unopposed evidence before that the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on February 3, 2017 and another 10 Day Notice was posted on March 2, 2017. Since the tenant did not pay the outstanding rent or file to

dispute the 10 Day Notices I find the tenant is conclusively presumed to have accepted that the tenancy would end on the effective date of the 10 Day Notice. Giving the benefit of two different effective dates to the tenant, I find the tenancy ended on the later date of March 15, 2017. Since March 15, 2017 has passed and the tenant has not yet returned possession of the rental unit to the landlord I provide the landlord with an Order of Possession as requested. 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 for the months of February 2017 and March 2017 in the sum of \$2,600.00. I further award the landlord recovery of the \$100.00 filing fee paid for one of the applications filed by the landlord. Accordingly, the landlord is provided a Monetary Order in the total sum of \$2,700.00 to serve and enforce upon the tenant.

For added certainty, the tenant's security deposit remains in trust to be administered in accordance with the Act.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been provided a Monetary Order in the sum of \$2,700.00 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: March 22, 2017

Residential Tenancy Branch