



Dispute Resolution Services

Page: 1

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. The tenant did not appear at the hearing. The landlord testified that he personally served the hearing documents upon the tenant, at the rental unit address, within three days of filing. The landlord also sent additional evidence, including a Monetary Order worksheet, to the tenant at the rental unit address via registered mail on March 4, 2017. The landlord provided a copy of a registered mail receipt as proof of service.

The landlord stated that he understands the tenant may be in the process of moving out but some of the tenant's possessions remain at the property and the tenant has not yet returned possession of the unit to the landlords. Accordingly, the landlord still seeks an Order of Possession.

I was satisfied that the tenant has been duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Although the Application for Dispute Resolution indicates the landlords are seeking a Monetary Order for unpaid rent of \$1,050.00 the landlord sought to amend this amount to \$2,100.00. This increased amount appears on the Monetary Order worksheet served upon the tenant via registered mail and reflects the inclusion of loss of rent for March 2017. Since the tenant remains in possession of the unit on this date, I find the request for an amendment non-prejudicial and I have considered the landlord's request for recovery of loss of rent for the month of March 2017 with this decision.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent?
2. Are the landlords entitled to a Monetary Order for unpaid and/or loss of rent for February 2017 and March 2017?
3. Are the landlords authorized to retain the security deposit?

Background and Evidence

The tenancy started on June 1, 2016 and the tenant paid a security deposit of \$525.00. The tenancy agreement requires the tenant to pay rent of \$1,050.00 on the first day of every month for a fixed term of one year. The tenant failed to pay rent for February 2017 and on February 2, 2017 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice) at the rental unit address, in the presence of witness. The 10 Day Notice indicates rent of \$1,050.00 was outstanding as of February 1, 2017 and has a stated effective date of February 16, 2017. The tenant did not pay the outstanding rent and did not file to dispute the 10 Day Notice.

The landlord seeks an Order of Possession effective as soon as possible and a Monetary Order to recover unpaid and/or loss of rent for February and March 2017.

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 of \$1,050.00 on the first day of every month and the tenant failed to do so for February 2017. I also accept that the landlord served the tenant with a 10 Day Notice in person on February 2, 2017 and the tenant did not pay the outstanding rent or file to dispute the 10 Day Notice within five days. Accordingly, I find the tenant is conclusively presumed to have accepted that the tenancy would end on February 16, 2017. Since the tenant has

not yet returned possession of the unit to the landlords as of this date, I provide the landlords with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlords are entitled to recover unpaid rent and/or loss of rent for the months of February 2017 and March 2017 in the sum of \$2,100.00. I further award the landlords recovery of the \$100.00 filing fee paid for this application.

I authorize the landlords to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlords.

In light of the above, the landlords are provided a Monetary Order calculated as follows:

Unpaid and/or loss of rent: February and March 2017	\$2,100.00
Filing fee	100.00
Less: security deposit	<u>(525.00)</u>
Monetary Order	\$1,675.00

Conclusion

The landlords have been provided an Order of Possession effective two (2) days after service upon the tenant. The landlords have been authorized to retain the tenant's security deposit and have been provided a Monetary Order for the balance of \$1,675.00 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 21, 2017

Residential Tenancy Branch