



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for cause; a Monetary Order for loss of rent; and, authorization to retain the security deposit, as amended. 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.

In filing this application the landlord had requested monetary compensation for loss of rent for the month of March 2017. During the hearing the landlord requested that his claim be amended to include loss of rent for April 2017 and authorization to retain the tenant's security deposit in satisfaction of loss of rent for April 2017. Since the tenant remains in possession of the rental unit and has not paid for use and occupancy of the rental unit for April 2017 I found the request to be reasonably foreseeable and I permitted the amendment.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to monetary compensation for loss of rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy started in February 2014 and the tenant paid a security deposit of \$525.00. Pursuant to the terms of tenancy, the tenant was required to pay rent of \$1,050.00 on the first day of every month. On January 20, 2017 the landlord issued a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") to the tenant and sent it to her via registered mail on January 24, 2017. The 1 Month Notice has a stated effective date of February 28, 2017.

The tenant acknowledged that she received the 1 Month Notice and after receiving it she asked the landlord if they could work something out to which the landlord said she had to move out. The tenant did not file an Application for Dispute Resolution to dispute the 1 Month Notice and continues to occupy the rental unit.

Both parties provided consistent testimony that the tenant did not pay for use and occupancy of the rental unit for the month of March 2017 or April 2017. The landlord seeks a Monetary Order for loss of rent for March 2017 and authorization to retain the security deposit in satisfaction of loss of rent for April 2017.

The landlord requested an Order of Possession effective as soon as possible. The tenant stated she has children and has a difficult time finding new housing.

Analysis

Under section 47(5) of the Act, a tenant in receipt of a 1 Month Notice to End Tenancy for Cause has 10 days to file an Application for Dispute Resolution to dispute the Notice and if the tenant does not dispute it the tenant is conclusively presumed to have accepted that the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Upon consideration of the undisputed evidence before me, including a copy of the 1 Month Notice, registered mail receipt, and verbal testimony of both parties, I am satisfied the landlord duly served the tenant with a 1 Month Notice to End Tenancy for Cause in the approved form and the tenant did not file an Application for Dispute Resolution to dispute it. Accordingly, I find the tenant conclusively presumed to have accepted the end of the tenancy and was required to vacate the rental unit by February 28, 2017. Since the tenant remains in possession of the rental unit I find the landlord entitled to an Order of Possession. Considering the tenant has remained in possession of the rental unit for more than a month after she was required to vacate, without paying any monies to the landlord for the continued occupation, I find it would unduly prejudice the landlord to deny his request for an Order of Possession effective as soon as possible. Provided to the landlord is an Order of Possession effective two (2) days after service upon the tenant.

Having heard undisputed evidence that the tenant has continued to occupy the rental unit until this date and has not paid the landlord any monies for the continued occupation, I find the landlord has established an entitlement to recover loss of rent from the tenant for the month of March 2017 and one-half of the monthly rent for April 2017 as he requested. I authorize the landlord to retain the tenant's security deposit in

partial satisfaction of the loss of rent. I further award the landlord recovery of the \$100.00 filing fee paid for this application.

The landlord had indicated he was seeking recovery of postage costs in filing his application; however, I did not consider that request further since costs to serve the other party documents are not recoverable under the Act.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Loss of Rent: March 2017	\$1,050.00
Loss of Rent: April 2017 (one-half)	525.00
Filing fee	100.00
Less: security deposit	<u>(525.00)</u>
Monetary Order for landlord	\$1,150.00

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 \$1,150.00 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: April 05, 2017

Residential Tenancy Branch