



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 the landlord's application for an Order of Possession and Monetary Order for unpaid rent and utilities. The landlord appeared at the hearing; however, there was no appearance on part of the tenant. The landlord submitted that the respondent was notified of this proceeding by registered mail sent on July 13, 2017. The landlord provided a registered mail receipt, including tracking number, as proof of service. A search of the tracking number shows that the registered mail was successfully delivered on July 18, 2017. I was satisfied that the respondent was duly notified of this proceeding and I continued to hear from the landlord without the respondent present.

The application was amended to name the tenant as being the personal representative of the deceased tenant's estate.

The landlord also requested that the monetary claim be amended to include loss of rent for the month of August 2017 since the rental unit continued to be occupied and no monies were received for the month of August 2017. I find this request reasonably foreseeable and I amended the monetary claim.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
2. Is the landlord entitled to a Monetary Order for unpaid rent and utilities?

Background and Evidence

The tenancy started in March 2016 and the tenant was required to pay rent of \$1,100.00 on the last day of the preceding month. The tenant was also required to pay for all utilities, including the water/sewer/garbage bill issued by the City.

I heard that the tenant had paid a security deposit but the landlord testified that the security deposit was applied to rent for March 2017 pursuant to the tenant's request after the rental unit was broken into and the tenant's rent money stolen.

I heard that on June 22, 2017 the tenant died. A woman the landlord suspects is the tenant's daughter, among others, has been occupying the rental unit. The tenant's son contacted the landlord and informed the landlord that he is the personal representative of the deceased tenant's estate.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") dated July 6, 2017 indicating rent of \$1,100.00 was outstanding as of July 1, 2017 and utilities of \$175.00 were outstanding. The 10 Day Notice was posted on the door of the rental unit with tape, in the presence of a witness; however, the landlord was uncertain as to the exact date the 10 Day Notice was posted. The landlord testified that the following day he observed the 10 Day Notice had been taken off the door. The 10 Day Notice was not disputed and rent and utilities remain outstanding.

The landlord acknowledged that when he completed the 10 Day Notice the amount of utilities was misstated and the actual bill that was due in May 2017 was only \$161.87. The landlord explained that the City sends a tenant's copy of the utilities bills to the tenant and another copy is sent to the landlord. The landlord stated the tenant failed to pay the utility bill for water/sewer/garbage that was due in May 2017.

The landlord seeks to regain possession of the rental unit as soon as possible and a Monetary Order for unpaid and/or loss of rent of \$2,200.00 for the months of July and August 2017 plus utilities of \$161.87.

As documentary evidence, the landlord provided a copy of the 10 Day Notice, registered mail receipt and written account of a telephone conversation the landlord had with the personal representative of the deceased tenant's estate.

Analysis

Under section 1 of the Act, the definition of tenant includes the estate of the deceased tenant. Accordingly, any reference to tenant in this analysis includes the estate of the deceased tenant.

Where a landlord serves a tenant with a 10 Day notice, the tenant has five days to pay the rent or utilities or file an Application for Dispute Resolution to dispute the Notice. If a tenant does not pay the rent or utilities and does not file to dispute the Notice within five

days of receiving the Notice, 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.

In this case, I accept the unopposed evidence before me that the landlord posted a 10 Day Notice to the door of the rental unit and pursuant to section 90 of the Act, the tenant is deemed to have received the 10 Day Notice three days after posting on the door of the rental unit. Having hearing unopposed evidence that the rent and utilities have not been paid and the 10 Day Notice was not disputed, I find the tenancy has ended pursuant to section 46(5) of the Act. Therefore, I provide the landlord with an Order of Possession effective two (2) days after service.

Based upon the unopposed evidence before me, I find the landlord is entitled to recover unpaid and/or loss of rent for the months of July 2017 and August 2017 in the amount of \$2,200.00 plus unpaid utilities of \$161.81. 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 sum of \$2,461.81 to serve and enforce upon the tenant.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service. The landlord has been provided a Monetary Order in the sum of \$2,461.81 to serve and enforce.

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: August 15, 2017

Residential Tenancy Branch