



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent; and, a Monetary Order for unpaid rent and authorization to retain the security deposit. The tenant did not appear at the hearing. The applicant/owner was represented by the manager of the property and the manager's wife. The manager testified that the hearing documents were sent to the tenant via registered mail on October 20, 2017 and when the registered mail was returned as unclaimed the manager delivered the hearing documents to the tenant in person on November 8, 2017. The landlord provided the registered mail receipt, including tracking number, as proof of service and a search of the tracking number confirmed the landlord's statements to be accurate. Section 90 of the Act deems a person to be in receipt of documents five days after mailing, even if the person refuses to accept or pick up their mail. In this case, I found the tenant to be deemed served with the hearing documents five days after mailing, on October 25, 2017, and I continued to hear from the landlord without the tenant present.

During the hearing the landlord requested that the monetary claim be amended to include loss of rent for the months of November 2017, December 2017 and January 2018 since the tenant has continued to occupy the rental unit and has not paid any monies for the continued use and occupancy of the unit. In these circumstances, I find the landlord's request for amendment to be a reasonably foreseeable consequence of continuing to occupy the rental unit and I amended the claim accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy started on March 1, 2017 and the tenant is required to pay rent of \$1,200.00 on the first day of every month. The landlord collected a security deposit of \$600.00. The tenant failed to pay rent for the month of September 2017. On September 2, 2017 the landlord sent a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") to the tenant at the rental unit address via registered mail. The 10 Day Notice indicates rent of \$1,200.00 was outstanding as of September 1, 2017 and has a stated effective date of September 17, 2017. The registered mail was not picked up by the tenant. The tenant did not pay the outstanding rent or file to dispute the 10 Day Notice. The tenant continues to occupy the rental unit and has not paid any monies to the landlord for the continued occupation of the rental unit.

The landlord seeks an Order of Possession as soon as possible. The landlord seeks to recover unpaid and/or loss of rent for the months of September 2017 through January 2018.

Evidence provided for this proceeding included copies of: a Shelter Information document for Income Assistance purposes that shows the tenant's rent is \$1,200.00 per month; the 10 Day Notice; the registered mail receipt for mailing the 10 Day Notice; and, the Canada Post website print-out showing the attempts made by Canada Post to deliver of the 10 Day Notice.

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 undisputed evidence before me that the tenant was required to pay rent of \$1,200.00 on the first day of every month and failed to pay rent for September 2017. I am satisfied by the evidence that the landlord sent a 10 Day Notice to the tenant via registered mail on September 2, 2017. Pursuant to section 90 of the Act the tenant is deemed to have received the 10 Day Notice five days later on September 7, 2017 even though she did not pick up the registered mail. Since the tenant did not pay the outstanding rent or dispute the 10 Day Notice within five days of September 7, 2017, I find the tenancy ended effective September 17, 2017. Accordingly, I find the landlord is entitled to an Order of Possession under section 55(2) of the Act and with this decision I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for September 2017 in the amount of \$1,200.00. Since the tenant has continued to occupy the rental unit, contrary to the 10 Day Notice and the requirements of the Act, I find the tenant's actions, or lack thereof, has resulted in the landlord's further loss of rent for the months of October 2017, November 2017 and December 2017 and at least part of January 2018. With this decision, I award the landlord unpaid and/or loss of rent for the period of September 1, 2017 through to January 15, 2018 in the amount of \$5,400.00. Should the landlord suffer further loss of rent due to the tenant's actions or lack thereof, the landlord is at liberty to file another Application for Dispute Resolution.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Rent for September 1, 2017 – January 15, 2018	\$5,400.00	
Filing fee		100.00
Less: security deposit		<u>(600.00)</u>
Monetary Order		\$4,900.00

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$4,900.00 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: January 03, 2018

Residential Tenancy Branch