



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing was held, via teleconference call, pursuant to an Interim Decision issued on February 19, 2018 in response to the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent under the Direct Request procedure. The landlord appeared and was represented by an agent and assisted by an interpreter during the hearing. There was no appearance on part of the tenant despite leaving the teleconference call open approximately 35 minutes.

Since the tenant did not appear, I proceeded to explore service of the hearing documents upon the tenant.

The landlord's agent submitted that the landlord's original Application for Dispute Resolution by Direct Request and supporting documents were served to the tenant in person at the rental unit on February 15, 2018 in the presence of a witness.

The Interim Decision and Notice of Hearing were issued to the landlord on February 22, 2018 with instruction to serve the tenant with the Interim Decision and Notice of Hearing. The landlord's agent testified that he served these documents to the tenant in person at the rental unit on March 5, 2018 with a witness present.

The landlord filed an Amendment to increase the monetary claim to include additional months of loss of rent and a request to retain the security deposit. The landlord's agent testified that he served the Amendment to the tenant in person at the rental unit on April 16, 2018 with a witness present.

The landlord's agent also testified that he spoke with the tenant yesterday when he went to the rental unit to see if the tenant would be paying anything for May 2018 and

the tenant indicated that he would be appearing at the hearing today. The landlord's agent confirmed that the tenant continues to occupy the rental unit.

I was satisfied that the tenant was duly served with notification of this proceeding and the landlord's claims against him, as amended, and I continued to hear from the landlord and her agent without the tenant present.

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 landlord purchased the property in 2016 and inherited the tenancy along with a \$575.00 security deposit. The existing tenancy agreement started on January 1, 2015 and required the tenant to pay rent of \$1,150.00 on the first day of every month.

The tenant paid \$1,100.00 toward the rent for November 2017, leaving a balance of \$50.00 outstanding. The tenant did not pay any rent for December 2017 or January 2018 and on January 15, 2018 the landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") indicating rent of \$2,350.00 was outstanding and a stated effective date of January 15, 2018.

The landlord's agent testified that the tenant did not pay the outstanding rent or file to dispute the 10 Day Notice. The landlord produced receipts showing payment of \$500.00 and \$300.00 was received from the tenant on February 1 and 6, 2018. The landlord's agent testified that the tenant continues to occupy the rental unit and has not paid any other monies toward rent for February, March, April or May 2018. The landlord stated the tenant has given many excuses and promises to pay rent but has failed to do so. The landlord seeks to regain possession of the rental unit as soon as possible.

By way of the original Application for Dispute Resolution and Amendment, the landlord seeks to recover unpaid and/or loss of rent for the months of November 2017 through April 2018, plus the security deposit, in the amount of \$6,375.00.

Analysis

Under section 26 the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold rent. I was presented unopposed evidence that the tenant was required to pay rent of \$1,150.00 on the first day of every month and failed to do so starting in November 2017. I was not provided any evidence to suggest the tenant had a legal right to withhold any rent from the landlord.

Where a tenant does not pay rent that is owed, the landlord is at liberty to serve a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") to the tenant. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day 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 served with a 10 Day Notice in person on January 15, 2018. Accordingly, the effective date should have read January 25, 2018 and automatically changes to comply pursuant to section 53.

Since the tenant did not pay the outstanding rent or dispute the 10 Day Notice within five days of receiving it, I find the tenancy has ended and the landlord is entitled to regain possession of the rental unit. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the undisputed evidence before me, I accept that the tenant has failed to comply with the 10 Day Notice by vacating the rental unit and since the tenant remains in possession of the rental unit, I find the landlord entitled to compensation for November 2017 through April 2018. However, I find the landlord's calculation is inaccurate based on the evidence before me. I calculate the unpaid and loss of rent to be:

November 2017	\$ 50.00
December 2017 through April 2018 (\$1,150 x 5 months)	5,750.00
Less: two partial payments made	<u>(800.00)</u>
Unpaid/Loss of Rent	\$5,000.00

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

The landlord requested authorization to retain the security deposit and added the security deposit to the monetary claim; however, a security deposit is used to offset the landlord's losses. Therefore, I authorize the landlord to retain the security deposit in partial satisfaction of the award for rent calculated above.

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

Unpaid/Loss of Rent: as calculated above	\$5,000.00
Filing fee	100.00
Less: security deposit	<u>(575.00)</u>
Monetary Order	\$4,525.00

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 or the balance of \$4,525.00 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: May 02, 2018

Residential Tenancy Branch