



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, RR, LRE, OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled for 9:30 a.m. on this date, via teleconference call, to deal with cross applications. The tenant applied for Orders for compliance; orders for the landlords to provide services or facilities; authorization to reduce rent payable; and to suspend or set conditions on the landlord's right to enter the rental unit. The landlords applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; and, authorization to retain the security deposit. The landlords appeared at the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open for at least 35 minutes.

The landlords confirmed that they received the tenant's Application for Dispute Resolution. Since the tenant did not appear at the hearing and the landlords were prepared to respond to his Application for Dispute Resolution, I dismissed the tenant's Application for Dispute Resolution without leave to reapply.

As for service of the landlords' hearing documents, the landlords testified that the documents were served upon the tenant by registered mail sent on March 22, 2018. The landlord orally provided a registered mail tracking number as proof of service. A search of the registered mail tracking number confirmed that registered mail was sent on March 22, 2018 and the tenant received the registered mail on March 26, 2018. I was satisfied the tenant was duly served with notification of the landlord's Application for Dispute Resolution and I continued to hear from the landlords without the tenant present.

The landlords requested their monetary claim be amended to include loss of rent for May 2018 since the tenant continues to occupy the rental unit. I found the request to be a reasonably foreseeable one since the tenant continues to occupy the rental unit and I amended the landlord's Application for Dispute Resolution accordingly.

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?
3. Are the landlords authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy started on February 10, 2014 and the landlords collected a security deposit of \$365.00. The rent was originally set at \$730.00 payable on the first day of every month. The rent has increased by way of Notices of Rent Increase and since January 1, 2018 the rent has been \$809.00 per month.

The tenant did not pay the rent for March 2018 when due. On March 5, 2018 the landlords posted a *10 Day Notice to End Tenancy for Unpaid Rent* ("the Notice") on the door of the rental unit. The Notice indicates rent of \$809.00 was outstanding since March 1, 2018 and has a stated effective date of March 16, 2018.

The landlords testified that the tenant did not pay the outstanding rent for March 2018 after serving the Notice; however, in April 2018 the tenant paid \$809.00 and in May 2018 the tenant paid \$740.00 which the landlords have accepted for use and occupancy of the rental unit for those months.

The landlords described that the parties were in negotiations with respect to resolving their disputes by way of a mutual agreement but stated no agreement reached.

The landlords seek an Order of Possession effective on May 31, 2018. The landlords seek to recover unpaid rent for March 2018 in the amount of \$809.00 and loss of rent of for the month of May 2018 in the amount of \$69.00. The landlords requested authorization to retain the security deposit in partial satisfaction of the unpaid rent.

In support of their Application for Dispute Resolution the landlords provided a copy of the tenancy agreement; Notices of Rent Increase; the 10 Day Notice; and a signed Proof of Service for 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, 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. Based on the unopposed evidence before me, I accept that the tenant was required to pay rent of \$809.00 on the first day of March 2018, he failed to do so, and I was not presented any evidence to suggest the tenant had a legal right to withhold rent from the landlords.

Where a tenant does not pay the rent that is due, 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 evidence before me that the landlords posted a *10 Day Notice to End Tenancy for Unpaid Rent* on the door of the rental unit on March 5, 2018. As the 10 Day Notice was posted, the tenant it is deemed to have received it three days later, pursuant to section 90 of the Act. Accordingly, I find the tenant is deemed to have received the 10 Day Notice on March 8, 2018 and had until March 13, 2018 to either pay the outstanding rent or dispute the Notice. I further find the effective date of the Notice automatically changes to read March 18, 2018 pursuant to sections 47 and 53 of the Act.

Since the tenant did not pay the outstanding rent by March 13, 2018 or dispute the Notice I find the tenancy ended on March 18, 2018. Accordingly, I grant the landlords' request for an Order of Possession to be effective on May 31, 2018.

Based upon the evidence before me, I also find the landlords entitled to recover unpaid rent for March 2018 in the amount of \$809.00 plus \$69.00 for loss of rent for May 2018.

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

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

Unpaid Rent: March 2018	\$809.00
Loss of Rent: May 2018	69.00
Filing fee	100.00
Less: security deposit	<u>(365.00)</u>
Monetary Order	\$613.00

Conclusion

The tenant's Application for Dispute Resolution has been dismissed without leave to reapply.

The landlords have been provided an Order of Possession effective on May 31, 2018. The landlords have been authorized to retain the tenant's security deposit and have been provided a Monetary Order for the balance of \$613.00.

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 16, 2018

Residential Tenancy Branch