



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL – S, FFL

Introduction

This hearing was scheduled for today's date, via teleconference call, to deal 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 tenant's security deposit. The landlord and landlord's grand-daughter appeared at the hearing; however, there was not appearance on part of the tenant despite leaving the teleconference call open at least 15 minutes. The landlord's grand-daughter translated for her grand-mother who does not speak English.

Since the tenant did not appear at the hearing, I explored service of hearing documents upon the tenant. The landlord's grand-daughter testified that the hearing documents were delivered to the tenant in person on December 13, 2018 and the inter-action was captured on videotape. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

I have amended the style of cause to reflect the rental unit as being the basement suite on the property, as indicated on the 10 Day Notice to End Tenancy for Unpaid Rent and confirmed by the landlord during the hearing.

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 loss of rent?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

Under an oral tenancy agreement the tenancy started approximately two years ago. The tenant paid a security deposit of \$450.00 and was required to pay rent of \$900.00 on the 19th day of every month since the tenancy started on the 19th.

The landlord testified that the last time the tenant paid rent was in August 2018 and no rent was received for the months of September 2018, October 2018 and November 2018. On November 28, 2018 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") to the tenant with a stated effective date of December 8, 2018. The 10 Day Notice indicates that the tenant failed to pay rent of \$900.00 that was due on November 19, 2018 and a notation that rent was not received for September 2018 and October 2018 as well. The landlord confirmed that after serving the tenant with the 10 Day Notice he did not pay any of the outstanding rent and has not paid any monies for the month of December 2018.

The landlord seeks an Order of Possession and a Monetary Order to recover unpaid rent and loss of rent taking into account the tenant still remains in possession of the rental unit.

A copy of the 10 Day Notice and a signed Proof of Service for service of the hearing documents were provided as documentary evidence for this proceeding.

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 to withhold rent.

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 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 10 Day Notice.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$900.00 on the 19th day of every month and the tenant has failed to do so for the month of September 2018 onwards. I also accept that the tenant was personally served with a 10 Day Notice on November 28, 2018. Accordingly, I find the tenant had until December 3, 2018 to either pay the outstanding rent or file to dispute the 10 Day Notice. Since the tenant did neither, I find the tenancy ended 10 days after the 10 Day Notice was received, or December 8, 2018. Therefore, I find the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the unopposed evidence before me, I find the landlord entitled to recover from the tenant the unpaid rent that was due on September 19, 2018; October 19, 2018; November 19, 2018. I further find the landlord entitled to recover loss of rent incurred on December 19, 2018 since the tenant did not vacate the rental unit when he was required and the landlord could not re-rent the unit, suffering a further loss.

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 to serve and enforce upon the tenant, calculated as follows:

Unpaid rent that was due on September 19, 2018	\$ 900.00
Unpaid rent that was due on October 19, 2018	900.00
Unpaid rent that was due on November 19, 2018	900.00
Loss of rent incurred on December 19, 2018	900.00
Filing fee	100.00
Less: security deposit	<u>(450.00)</u>
Monetary Order	\$3,250.00

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 owing of \$3,250.00 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 04, 2019

Residential Tenancy Branch