

DECISION

Dispute Codes OPR, MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlord's agent testified that the tenant was served with notification of this hearing and the landlord's evidence by registered mail sent to the rental unit on March 19, 2010 and that the tenant still resided in the rental unit at the time of mailing. The landlord's agent provided a copy of the registered mail receipt as evidence of service. Having been satisfied of service of the hearing documents, I proceeded to hear from the landlord's agent without the tenant present.

At the commencement of the hearing, the landlord testified that the tenant vacated the rental unit April 1, 2010 and that an Order of Possession is no longer required. Accordingly, I do not provide an Order of Possession with this decision and the remainder of this decision pertains to the landlord's monetary claim only.

The landlord requested the landlord's application be amended to withdraw the landlord's request for retention of the security deposit with the explanation that a security deposit was not paid by the tenant. I accepted the landlord's request for amendment; however, I make no finding as to whether a security deposit was paid or not.

Issues(s) to be Decided

Is the landlord entitled to recover unpaid rent and loss of rent from the tenant for the months of February and March 2010?

Background and Evidence

I was provided the following evidence by the landlord. There is no written tenancy agreement. The month-to-month tenancy commenced approximately September 2008. The tenant was required to pay rent of \$600.00 on the 1st day of every month. On December 28, 2009 the landlord issued a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") and posted it on the tenant's door. The 2 Month Notice has an effective date of March 1, 2010. On March 10, 2010 the landlord posted a *10 Day Notice to End Tenancy for Unpaid Rent* (10 Day Notice) on the tenant's door. The 10 Day Notice indicates rent was unpaid for the months of February and March 2010. The landlord's agent testified that the tenant did not pay the outstanding rent upon receiving the 10 Day Notice.

On March 30, 2010 the landlord and tenant participated in a dispute resolution hearing with respect to the landlord's application for an early end to tenancy and the Dispute Resolution Officer recorded in that decision that the parties had mutually agreed that the tenant would vacate the rental unit April 1, 2010 at 3:00 p.m.

During the hearing, the landlord's agent acknowledged that the effective date on the 2 Month Notice should have read March 31, 2010 to comply with the requirements of the Act.

Analysis

Where a tenant receives a 2 Month Notice, section 51 of the Act provides that the tenant is entitled to compensation equivalent to one month's rent. The tenant is also permitted to withhold the last month's rent in satisfaction of that entitlement to compensation. Based upon the evidence before me, I am satisfied the tenant was

served with a 2 Month Notice and that the effective date should read March 31, 2010. Therefore, the tenant was entitled to withhold rent for the month of March 2010.

Although I heard that the tenant did not pay rent for February, I do not find that the failure to pay rent for February 2010 disentitled the tenant from receiving the compensation afforded him under section 51 of the Act.

As I have found the tenant was entitled to withhold rent for March 2010 the only issue for me to determine is whether the landlord is entitled to recover unpaid rent for February 2010. Based upon the evidence before me, I find the tenant was obligated to pay rent for the month of February 2010 and that he failed to do so and was served with a 10 Day Notice. I also accept that the tenant did not pay the outstanding rent for February 2010 upon receiving the 10 Day Notice. Therefore, I grant the landlord's request to recover unpaid rent for the month of February 2010.

As the landlord was partially successful with the monetary claim, I award one-half of the filing fee to the landlord.

In light of the above findings, the landlord is provided a Monetary Order in the total amount of \$625.00 to serve upon the tenant. The Monetary Order may be enforced in Provincial Court (Small Claims).

Conclusion

The landlord was partially successful in this application and has been provided a Monetary Order in the amount of \$625.00 to serve 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 04, 2010.

Dispute Resolution Officer