



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and a Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord provided two registered mail receipts, including tracking numbers, as proof of service of the hearing documents sent to the tenant on July 27, 2012 and July 30, 2012 at the rental unit. The landlord verbally provided a registered mail tracking number during the hearing as proof of service of the landlord's evidence package on August 8, 2012. The landlord testified that pursuant to a Notice of Entry the landlord entered the unit August 10, 2012 and found the unit to be furnished and apparently occupied. I was satisfied the tenant has been served with the hearing package and evidence. Accordingly, I proceeded to hear from the landlord without the tenant present.

During the hearing the landlord requested the application be amended to include loss of revenue for August 2012, as indicated in the evidence package sent to the tenant August 8, 2012; and, to request authorization to retain the security deposit in partial satisfaction of the rental arrears. Having heard the rental unit is still occupied and the landlord included the claim for August 2012 losses in the landlord's evidence package I agreed to consider the landlord's request for loss of revenue. I also found the landlord's request to retain the security deposit to be non-prejudicial to the tenant as it would reduce the Monetary Order and I have considered that request. I have amended the application accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Has the landlord established an entitlement to recovery of unpaid or loss of rent, late fees, NSF fees, and pool membership charges up to and including the month of August 2012?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The landlord submitted the following information: The tenancy commenced November 1, 2010 and the tenant paid a \$625.00 security deposit. The tenancy agreement stipulates that rent of \$1,250.00 is payable on the 1st day of every month. The landlord testified that rent was increased to \$1,278.00 pursuant to a Notice of Rent Increase starting November 1, 2011. The landlord charges \$25.00 for late fees or \$25.00 for as an NSF administrative charge, but not both for the same month. In addition, the tenant is required to pay a pool membership fee of \$25.00 per month.

The tenant failed to pay all of the rent payable for July 2012 and on July 10, 2012 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door. The Notice indicates that \$913.00 was outstanding as of July 1, 2012 and has a stated effective date of July 24, 2012. The tenant did not file to dispute the Notice and did not pay the outstanding rent. Rather, the tenant emailed the landlord on July 16, 2012 to advise the landlord the funds would be sent to cover the payment and requested the landlord not evict him.

Payment for the outstanding rent for July 2012 was not received, nor was any payment made for August 2012; yet, the rental unit remains occupied. By way of the amended application the landlord is seeking to recover a total of \$2,266.00. Pursuant to the ledger this amount is comprised of rent, late fees, NSF fees and pool membership charges.

The six pages of the tenancy agreement provided as evidence do not provide for late fees or NSF fees or pool charges. The tenancy agreement indicates that there is an Addendum but the landlord did not provide a copy of the Addendum. The landlord did not supply a copy of the pool membership agreement and testified that it is an agreement separate from the tenancy agreement.

Analysis

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.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on July 24, 2012 and the landlord is entitled to regain possession of the rental

unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Under the Act, a tenant is required to pay rent when due under the tenancy agreement. I accept that the tenant's monthly rent is \$1,278.00 payable on the 1st day of every month and the landlord is entitled to recover the unpaid portion for July 2012. I further award the landlord loss of rent of \$1,278.00 for the month of August 2012 since the tenant has not returned vacant possession to the landlord.

The Residential Tenancy Regulations provides for other fees that a landlord may charge a tenant, including late fees or administrative charges for cheques returned NSF. The Regulations provide that in order to charge a tenant late fees or administrative charges for NSF cheques, such a term must be in the tenancy agreement.

The tenancy agreement provided to me does not include a provision for late fees or NSF fees. In the absence of the Addendum I find the landlord has not proven an entitlement to collect late fees or administrative charges for NSF cheques from the tenant. Accordingly, I make no such award to the landlord.

Further, I do not have the authority to enforce agreements other than tenancy agreements. Since the charge for the pool is not included in the tenancy agreement, I make no award for recovery of pool membership fees.

I authorize the landlord to retain the security deposit in partial satisfaction of the rent owed to the landlord. I further award the filing fee to the landlord.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – July 2012	\$ 1,278.00
Loss of rent – August 2012	1,278.00
Less: credit balance per ledger	(365.00)
Less: security deposit	(625.00)
Plus: filing fee	<u>50.00</u>
Monetary Order	\$ 1,616.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,616.00 to serve upon the tenant and enforce as necessary.

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: August 21, 2012.

Residential Tenancy Branch