Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>   OPR, MNR, FF

<u>Introduction</u>

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on November 19, 2012, the tenant did not attend. The landlord gave oral testimony to serving the documents on that date and in that manner, and provided a tracking number assigned by Canada Post for the registered mail, and I am satisfied that the tenant has been served in accordance with the Residential Tenancy Act. The line remained open while the phone system was monitored for 10 minutes and the only participant who dialed into the conference call hearing was the landlord.

All evidence and testimony provided has been reviewed and is considered in this Decision.

<u>Issue(s) to be Decided</u>

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

<u>Background and Evidence</u>

The landlord testified that this month-to-month tenancy began about 8 years ago. The tenant was renting from the landlord's father, and the landlord who attended this hearing took over as property manager about 2 years ago. The tenant abandoned the rental unit on or about November 23, 2012. Rent in the amount of $680.00 per month was payable in advance on the 1st day of each month, although the landlord is not certain whether or not a written tenancy agreement exists, and if one does, the landlord is not

aware of it. The landlord further testified that rent has not been increased during the tenancy, and the landlord assumes that the tenant paid a security deposit in the amount of $340.00 at the outset of the tenancy because that is half a month's rent.

The landlord further testified that in the spring of 2012 the tenant's job ended and the tenant fell behind in rent. The landlord had some sympathy for the tenant and agreed that the tenant could pay rent for April at the end of the month instead of at the beginning of the month. The same arrangement was made between the parties for May's rent. In June, 2012 the tenant couldn't pay the rent again on time, but paid the landlord $300.00, and on June 30, 2012 paid another $380.00 but the cheque was returned by the tenant's financial institution for insufficient funds. On July 11, 2012 the tenant again paid the landlord $680.00 by way of a cheque that was returned for insufficient funds. The tenant paid no rent at all for the month of August, and on October 1, 2012 the tenant again paid the rent with a cheque for $680.00 which was returned N.S.F.

The landlord made the following submissions with respect to rents due and paid:

DATE	DESCRIPTION	OWING	PAID	BALANCE DUE
Feb 1, 2012	Rent Due	$680.00	$680.00	0
Mar 1, 2012	Rent Due	$680.00	0	$680.00
Mar 15, 2012	Rent Paid		$340.00	$340.00
Mar 27, 2012	Rent Paid		$340.00	0
Apr 1, 2012	Rent Due	$680.00	0	$680.00
Apr 30, 2012	Rent Paid		$340.00	$340.00
May 1, 2012	Rent Due	$680.00	0	$1,020.00
May 9, 2012	Rent Paid		$340.00	$680.00
June 1, 2012	Rent Due	$680.00	$300.00	$1,060.00
June 30, 2012	Rent Paid		$380.00	$680.00
June 30, 2012	Cheque Ret'd		- $380.00	$1,060.00

July 1, 2012	Rent Due	$680.00	0	$1,740.00
July 11, 2012	Rent Paid		$680.00	$1,060.00
July 11, 2012	Cheque Ret'd		-$680.00	$1,740.00
Aug 1, 2012	Rent Due	$680.00	0	$2,420.00
Sep 1, 2012	Rent Due	$680.00	0	$3,100.00
Oct 1, 2012	Rent Due	$680.00	$680.00	$3,100.00
Oct 1, 2012	Cheque Ret'd		-$680.00	$3,780.00

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 30, 2012 by posting it to the door of the rental unit and provided a copy of the document for this hearing. The notice is dated October 30, 2012 and states that the tenant failed to pay rent in the amount of $680.00 that was due on June 1, 2012 and contains an expected date of vacancy of November 10, 2012.

The landlord also claims unpaid rent and loss of revenue for November and December, 2012, for a total claim of $5,140.00.

The landlord further testified that the tenant had advised that the tenant would not be returning and left belongings in the rental unit. The landlord requests an Order of Possession.

Analysis

The *Residential Tenancy Act* states that if a tenant does not pay rent when it is due, the landlord may, on any date after the date rent is due, serve the tenant with a notice to end tenancy. Once served, or deemed served, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out by that date, which must be no earlier than 10 days after the tenant has been served. In this case, I find that the tenant was deemed served on November 2, 2012, being 3 days after the notice was posted to the door of the rental unit, and the effective date of vacancy ought to read November 12, 2012, being 10 days after service. The *Act* also provides that incorrect effective dates contained in a notice to end tenancy are automatically changed to the nearest date that complies with the *Act,* and I find that the

effective date is deemed to be November 12, 2012. The tenant has not disputed the notice within 5 days and did not pay the rent, and I find that the landlord is entitled to an Order of Possession.

With respect to the monetary order, I accept that the tenant vacated the rental unit on or about November 23, 2012 as a result of the notice to end tenancy and I find that the landlord is entitled to rent in the amount of $$4,460.00 to the end of November, 2012 and loss of revenue for the month of December, 2012 in the amount of $680.00. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the $50.00 filing fee for the cost of this application, for a total monetary order in the amount of $5,190.00.

The landlord has not applied for an order permitting the landlord to keep the security deposit in partial satisfaction of the claim, and I have no reliable evidence or testimony with respect to the amount of the security deposit held in trust. Therefore, I make no orders with respect to the security deposit; the landlord is required under the *Act* to deal with the security deposit according to Section 38.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $5,190.00.

This order is final and binding on the parties and may be enforced.

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: December 20, 2012.

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Residential Tenancy Branch