Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUNTINGDON APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession and Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?
Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The tenancy commenced January 1, 2013 and the tenant paid a security deposit of $387.50 and a pet deposit of $100.00. The tenant is required to pay rent of $775.00 on the 1st day of every month. The tenant failed to pay $275.00 of the rent owed for February 2013 when due and the landlord personally served the tenant with both pages of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on February 9, 2013. The Notice indicates rent of $275.00 was outstanding and has a stated effective date of February 20, 2013. The tenant paid the outstanding rent on February 22, 2013 and the landlord issued a receipt for use and occupancy only. The tenant continues to occupy the rental unit and has not paid any monies for the month of March 2013.

The landlord requested an Order of Possession effective two days after service. The landlord requested a Monetary Order to recover the loss of rent for March 2013.

The tenant did not refute or deny any of the information put for the by the landlord but indicated she would like to remain in the unit until April 1, 2013. The landlord was not agreeable to the tenant's request.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy.

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 undisputed evidence before me that the landlord served both pages of a 10 Day Notice upon the tenant on February 9, 2013 with an effective date of February 20, 2013. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on February 20, 2013. I am also satisfied the landlord did not reinstate the tenancy upon receiving the rental arrears on February 22, 2013. Therefore, I find the landlord 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, as requested.

Based upon the evidence before me, I am satisfied the landlord has suffered a loss of rent for the month of March 2013 due to the tenant's breach of the tenancy agreement and Act and continued occupation of the rental unit. Therefore, I grant the landlord's request to recover $775.00 from the tenant for the month of March 2013. I also award the landlord the filing fee paid for this application.

The landlord did not request authorization to retain the tenants' security deposit or pet deposit with this Application for Dispute Resolution and, as such, the deposits remain in trust for the tenant, to be administered in accordance with the Act.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Loss of Rent: March 2013	$ 775.00
Filing fee	50.00
Monetary Order	$ 825.00

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 upon the tenant. The landlord has been provided a Monetary Order in the amount of $825.00 to serve and enforce as necessary. The tenants' security deposit and pet deposit remain in trust, to be administered in accordance with the Act.

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: March 19, 2013

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Residential Tenancy Branch