



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing their claim as "*680.00 March 680.00 for April*" on their original application

Based on the aforementioned I find the Landlord's intention of seeking to recover the payment for use and occupancy or loss of rent, for a period after the tenancy ended in accordance with the 10 Day Notice, was an oversight and/or clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application. Therefore I amended their application, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep all or part of the security deposit; and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted documentary evidence which indicates the Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on March 16, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant is deemed to have received notice of this proceeding, in accordance with section 90 of the Act, and I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the 10 Day Notice to end tenancy for unpaid rent; Canada Post receipts; and the tenancy agreement.

The Landlord stated that the parties entered into a fixed term tenancy agreement that began on June 1, 2004 and switched to a month to month tenancy after six months. Rent is payable on the first of each month and began at \$565.00 and has since been increased to \$680.00 per month. On May 14, 2004 the Tenant paid \$282.50 as the security deposit.

The Landlord testified that when the Tenant failed to pay the March 1, 2013, rent a 10 Day Notice was posted to the Tenant's door on March 5, 2013. The Landlord stated that she has reason to believe the Tenant may have vacated the rental unit last night, April 10, 2013. He has not paid for March or April 2013 rent so they are seeking to regain possession of the unit as soon as possible and be granted a Monetary Order. She is not certain that he has relinquished possession so she is still seeking an Order of Possession. She did not that it appears he left the keys inside the unit.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on March 8, 2013, three days after it was posted to their door, and the effective date of the Notice is **March 18, 2013**, in accordance with section 90 of the Act. The Tenant did not pay the rent and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$680.00 which was due March 1, 2013. The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for March 2013 unpaid rent of **\$680.00**.

As noted above this tenancy ended **March 18, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for April 2013, not rent. The Tenant continued to occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of April 2013, in the amount of **\$680.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid March 2013Rent	\$ 680.00
Use and Occupancy and/or loss of rent for April 2013	680.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,410.00
LESS: Security Deposit \$950.00 + Interest 10.01	<u>-960.01</u>
Offset amount due to the Landlord	<u>\$ 449.99</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$449.99**. This Order is legally binding and must be served 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: April 11, 2013

Residential Tenancy Branch

