



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NICKY AND JACK ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an application 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 tenants for the cost of this application.

The landlord's agent served the tenants with a copy of the application and Notice of Hearing documents by registered mail. The landlord's agent provided the Canada Post tracking numbers to prove this method of service. In the absence of any other evidence to contradict this, I find that the tenant was served the hearing documents as per the *Residential Tenancy Act* (the 'Act').

The landlord's agent attended the hearing and provided affirmed testimony during the hearing and documentary evidence in advance of the hearing. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence submitted was carefully considered in this Decision.

At the start of the hearing the landlord also requested to claim outstanding rent for September, 2013 and to use the security deposit towards this amount.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to unpaid rent relating to August and September, 2013?
- Can the landlord keep the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that the tenancy started on August 1, 2012 for a fixed term of one year which then went on to a month-to-month basis. A written tenancy

agreement was completed, which was provided as evidence, and the tenant paid a security deposit of \$575.00 on the same day, which the landlord still retains. Currently, rent in the amount of \$1,150.00 is payable by the tenant on the first day of each month.

The landlord's agent testified that the tenant failed to pay rent on August 1, 2013. As a result, the landlord served the tenant with both pages of a 10 Day Notice to End Tenancy for Unpaid Rent, on August 2, 2013 by registered mail. The Canada Post receipt was provided as evidence for this method of service. The notice, which was provided as evidence, shows an expected date of vacancy of August 17, 2013, due to \$1,150.00 of unpaid rent which was due on August 1, 2013.

The landlord's agent further testified that the tenant has also failed to pay for September, 2013 rent in the amount of \$1,150.00. As a result, the landlord now seeks to claim a total of \$2,300.00 outstanding rent relating to August and September, 2013.

The tenant failed to attend the hearing or provide any written submissions prior to this hearing taking place to contradict any of the evidence provided by the landlord.

Analysis

Section 46(4) and (5) of the *Act* states that within five days of a tenant receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a tenant must pay the overdue rent or apply for dispute resolution; if the tenant fails to do either, then they are conclusively presumed to have accepted the notice to end tenancy and they must vacate the rental unit on the date to which the notice relates.

Having examined the notice to end tenancy, I find that the contents on the approved form complied with the requirements of the *Act*.

The tenant was served by the landlord with the notice to end tenancy on August 2, 2013, by registered mail. The *Act* states that documents served in this manner are deemed to have been received five days after such mailing. Therefore, I find that the tenants were deemed to be served on August 7, 2013, and had until August 12, 2013 to pay the overdue rent or apply to dispute the notice as required by the *Act*, neither of which the tenant did.

As a result, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and therefore, the landlord is entitled to an Order of Possession.

Based on the evidence of the landlord and the absence of any evidence from the tenant to dispute this, I also find that the landlord is entitled to a Monetary Order in the amount of \$2,300.00 relating to unpaid rent for August and September, 2013.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenant the \$50.00 filing fee for the cost of this application pursuant to Section 72(2) (b) of the *Act*. Therefore, the total amount payable by the tenant to the landlord is \$2,350.00.

As the landlord already holds a \$575.00 security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the *Act*. As a result, the landlord is awarded \$1,775.00.

Conclusion

For the reasons set out above, I grant the landlord an Order of Possession effective **2 days after service on the tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the landlord a Monetary Order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,775.00**. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: September 26, 2013

Residential Tenancy Branch

