



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an order of Possession for unpaid rent and a Monetary Order for unpaid rent; loss of rent; late fees; and, authorization to retain the security deposit and pet damage deposit. The tenant did not appear at the hearing. The landlord testified that the hearing documents were given to the tenant in person at the rental unit on October 16, 2013 in the presence of the former assistant manager. The former assistant manager appeared at the hearing and confirmed service upon the tenant as stated by the landlord. I was satisfied the tenant was served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to monetary compensation for unpaid rent; loss of rent; and, late fees?
3. Is the landlord authorized to retain all or part of the security deposit, pet damage deposit and/or accrued interest?

Background and Evidence

The tenancy commenced in August 2005 and the tenant paid a security deposit and pet damage deposit totalling \$695.00. The tenancy agreement provides for monthly rent of \$695.00 was due on the 1st day of every month and late fees of \$25.00. By way of Notices of Rent Increase the monthly rent was increased to its current rate of \$800.00 per month.

On October 2, 2013 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the door of the rental unit in the presence of a witness, the former

assistant manager. The Notice indicates rent of \$650.00 was outstanding as of October 1, 2013 and has a stated effective date of October 14, 2013.

The landlord testified that on November 1, 2013 the tenant gave the landlord \$825.00 for which a receipt was issued "for use and occupancy only".

Taking into account the tenant's payment of \$825.00 the landlord is seeking to reduce the monetary claim to loss of rent of \$625.00 for the month of November 2013 and a \$25.00 late fee for the months of October 2013 and November 2013.

Documentary evidence provided by the landlord included: the tenancy agreement; a Notice of Rent Increase showing the monthly rent increased to \$800.00 as of June 1, 2012; the 10 Day Notice; and, a signed Proof of Service for the 10 Day Notice.

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 all of the rent that is due 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 evidence before me that the tenant was required to pay rent of \$800.00 on by October 1, 2013 and failed to do so. I accept the evidence before me that the landlord posted a 10 Day Notice on the tenant's door on October 2, 2013. As the 10 Day Notice was posted it is deemed to be received three days later under section 90 of the Act. Accordingly, the effective date of the Notice automatically changes to comply with the Act and reads October 15, 2013 pursuant to sections 46 and 53 of the Act.

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 October 15, 2013. I accept that the landlord did not re-instate the tenancy upon receiving the \$825.00 payment on November 1, 2013 as evidenced by issuance of a receipt "for use and occupancy only". Further, I am satisfied that any part of the \$825.00 payment that was applied to November 2013 has since been realized by the tenant given the date of this hearing.

Therefore, I find that the landlord is entitled to regain possession of the rental unit and I provide an Order of Possession effective two (2) days after service upon the tenant.

I find the landlord entitled to recover loss of rent for the month of November 2013 in the amount of \$625.00, as requested. I also find the landlord entitled to collect a \$25.00 late fee for October 2013. I make no award for a late fee for November 2013 as the tenancy ended in October 2013. I also award the landlord the \$50.00 filing fee paid for this application.

In light of the above, I find the landlord entitled to recover a total of \$700.00 from the tenant. I authorize the landlord to deduct \$700.00 from the tenant's security deposit and pet damage deposit which, including interest, amount to \$719.58.

As the landlord's award has been satisfied by way of deductions from the deposits I do not provide a Monetary Order to the landlord with this decision.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been awarded \$700.00 and has been authorized to deduct this amount from the security deposit, pet damage deposit and accrued interest on the deposits.

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: November 21, 2013

Residential Tenancy Branch

