



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent and utilities; as well as authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that she sent the hearing package to the tenant at the rental unit via registered mail on January 18, 2014. The landlord provided the registered mail tracking number as proof of service and confirmed that the tenant was still residing at the rental unit at the time of mailing. The landlord testified that the registered mail was unclaimed by the tenant and a returned to the landlord. When the tenant returned to the property to retrieve some of her possessions in mid-February 2014 the landlord gave the tenant another copy of the hearing package.

Section 90 of the Act deems a person to have received documents five days after mailing so that a person cannot avoid service by refusing to accept or pick up their mail.

Pursuant to the deeming provision of section 90 and upon hearing the tenant was personally given another copy of the hearing package in February 2014 I find the tenant was sufficiently served with the landlord's hearing package and I continued to hear from the landlord without the tenant present.

The landlord confirmed that the tenant abandoned the rental unit in late February 2014. As such, I find an Order of Possession is no longer required. The remainder of this decision deals with the landlord's monetary claim against the tenant.

The landlord requested the landlord's monetary claim be increased to include a by-law fine the landlord received after this Application was filed. I did not permit the request as the landlord did not amend the Application in a manner that complies with the Rules of Procedure and I was unsatisfied the tenant has been put on notice that such a claim would be heard and decided upon during this hearing.

Issue(s) to be Decided

1. Has the landlord established an entitlement to the amounts claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The one year fixed term tenancy commenced September 1, 2013 and the tenant paid a security deposit of \$675.00. The tenant was required to pay rent of \$1,350.00 on the 1st day of every month and 50% of electricity and heat bills. The tenant failed to pay rent for January 2014 and on January 9, 2014 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice).

The 10 Day Notice has a stated effective date of January 9, 2014 and indicates the tenant failed to pay \$1,350.00 in rent as of January 1, 2014 and \$248.99 in utilities that were demanded in writing on January 1, 2014.

The landlord testified that the tenant did not pay the outstanding rent or utilities after receiving the 10 Day Notice, did not pay any monies for use and occupancy for February 2014, and did not return possession of the rental unit until late February 2014. The landlord testified that the rental unit required cleaning and removal of abandoned possessions. As such, the landlord has not yet re-rented the unit but anticipates advertising it in the near future.

The landlord is seeking unpaid and/or loss of rent for the months of January, February and March 2014. In addition, the landlord is seeking unpaid utilities of \$248.99.

As documentary evidence for this proceeding, the landlord provided a copy of the tenancy agreement; 10 Day Notice; and, a signed Proof of Service of the 10 Day Notice. The landlord did not produce the utilities bills or a copy of the written demand given to the tenant for payment of utilities.

Analysis

Under the Act, a tenant is required to pay rent when due under the tenancy agreement. Where a tenant fails to pay rent that is due, the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. A tenant who receives a 10 Day Notice has five days to either pay the outstanding rent or file to dispute the Notice.

Based upon the undisputed evidence before me, I accept that the tenant failed to pay rent for January 2014 and the landlord is entitled to recover that rent from the tenant.

I accept the evidence before me that the tenant was served with a 10 Day Notice to End Tenancy on January 9, 2014. In this case, the stated effective date on the 10 Day Notice is incorrect and should read January 19, 2014. Where a stated effective date is incorrect, the Act provides that the effective date automatically changes to comply.

Pursuant to section 46(5) of the Act, since the tenant failed to pay the outstanding rent and did not file to dispute the Notice, the tenant was deemed to have accepted that the tenancy would end on the effective date of the Notice and would have to vacate the unit by that date. Therefore, I find the tenancy ended January 19, 2014 and the tenant was required to vacate the unit by that date.

I accept the undisputed evidence before me that the tenant remained in possession of the rental unit until late February 2014 which is also a violation of her requirement to vacate the unit by January 19, 2014. Therefore, I find the landlord entitled to recover loss of rent for the month of February 2014.

In addition, given the rental unit remains vacant as of the date of this hearing with an uncertain re-rental date, I further award the landlord loss of rent for the period of March 1 – 15, 2014. Should the landlord suffer loss of rent after March 15, 2014 the landlord may file another Application for Dispute Resolution seeking further compensation.

In the absence of utility bills or a copy of the written demand for payment of utilities given to the tenant, I find the landlord has not provided sufficient evidence to prove her entitlement to recover the amount of utilities she is seeking. Therefore, I dismiss this portion of the landlord's claim.

I award the landlord the \$50.00 filing fee paid for this Application for Dispute Resolution.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent: January 2014	\$1,350.00
Loss of Rent: February 2014	1,350.00
Loss of Rent: March 1 – 15, 2014	675.00
Filing fee	50.00
Less: security deposit	<u>(675.00)</u>
Monetary Order	\$2,750.00

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,750.00 to serve and enforce as necessary.

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 04, 2014

Residential Tenancy Branch

