



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the conference call hearing, gave affirmed testimony, and provided evidentiary material prior to the commencement of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution, evidence and notice of hearing documents by registered mail on March 4, 2014, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to any testimony, and the only participant who joined the hearing was the landlord. The landlord provided a copy of the Canada Post receipt and tracking number for the registered mail bearing the date of March 4, 2014, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for late fees for late payment of rent?

Background and Evidence

The landlord testified that this fixed-term tenancy began on August 1, 2013 and is to expire on August 30, 2014. The tenant still resides in the rental unit. Rent in the amount of \$1,250.00 per month is payable in advance on the 1st day of each month. A copy of the tenancy agreement has been provided and it requires the tenant to pay a security deposit in the amount of \$1,000.00 but the landlord testified that the tenant has not paid any of it.

The landlord further testified that the tenant failed to pay rent when it was due for the month of January, 2014. The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 6, 2014 by personally handing it to the tenant. A copy of the notice has been provided. It is dated January 6, 2014 and contains an expected date of vacancy of January 16, 2014. The notice states that the tenant failed to pay rent in the amount of \$1,250.00 that was due on January 1, 2014. Only the first page of the 2-page form has been provided, and the landlord testified that the second page was in fact served as well.

The tenant further failed to pay any rent for the month of February, 2014 and the landlord again served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 3, 2014 by posting it to the door of the rental unit. A copy of both pages of that notice has been provided and the landlord testified both pages were served. It is dated February 3, 2014 and contains an expected date of vacancy of February 15, 2014. The notice states that the tenant failed to pay rent in the amount of \$1,250.00 that was due on February 1, 2014. The landlord testified that the amount due for this notice was in addition to the amount still owing from the first notice.

The landlord testified that no rent has been paid for March, 2014 and the tenant is now in arrears 3 months of rent. No rent has been paid since the issuance of either notice to end the tenancy given by the landlord.

The tenancy agreement provides for late fees and fees for return of a tenant's cheque by the tenant's bank for any reason in the amount of \$50.00, and \$20.00 per day in addition to the \$50.00, which brings the total of the landlord's claim to \$5,100.00.

The landlord asks for an Order of Possession and a monetary order for unpaid rent and late fees as per the tenancy agreement.

Analysis

Firstly, with respect to the application for an Order of Possession, the *Residential Tenancy Act* states that a tenant who is served with a 10 Day Notice to end Tenancy for Unpaid Rent or Utilities must pay the rent in full or dispute the notice within 5 days of receiving it. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no less than 10 days after the tenant receives it. Documents served by posting them to the door of the rental unit are deemed served 3 days later.

With respect to the first notice issued, I accept the undisputed testimony of the landlord that the notice was personally served on the tenant on January 6, 2014. The tenant did not pay the rent or dispute the notice by January 11, 2014, and therefore I find that the tenant was conclusively presumed to have accepted the end of the tenancy. However, the tenant did not move out of the rental unit and another notice was issued on February 3, 2014 by posting it to the door of the rental unit. I find that was deemed served on February 6, 2014 and therefore the effective date of vacancy ought to read February 16, 2014 and not February 15, 2014 as stated on the notice. The *Act* states that incorrect effective dates contained in a notice to end tenancy are changed to the nearest date that complies with the *Act*, which I find is February 16, 2014. The tenant did not pay the rent, did not dispute the notice, and did not move out of the rental unit, increasing arrears.

I find that the landlord is entitled to an Order of Possession on 2 days notice to the tenant.

With respect to the monetary order, I am satisfied that the landlord is owed \$1,250.00 per month for the months of January, February and March, 2014 and the landlord is entitled to a monetary order for \$3,750.00.

However, with respect to late fees, the regulations to the *Residential Tenancy Act* limit such fees to a service fee charged by a financial institution to the landlord for the return of a tenant's cheque; and an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent if that term is contained in the tenancy agreement. In this case, there is a term for a late payment of rent, however, I find that it is excessive and I reduce the late fees to \$75.00, being \$25.00 for late payment of rent for the months of January, February and March, 2014.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of filing.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,925.00.

This order is final and binding and may be enforced.

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 27, 2014

Residential Tenancy Branch

