



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ELIZABETH MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 19, 2013, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; 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 provided affirmed testimony that the Tenant was personally served with copies of their application for dispute resolution, the Notice of hearing document, and their evidence, on April 19, 2014. Based on the submissions of the Landlord, I find that the Tenant was sufficiently served with the hearing documents, in accordance with section 89 of the Act. Accordingly, I continued with this proceeding in absence of the Tenant.

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 evidence that the Tenant entered into a fixed term tenancy that began on February 1, 2013 and switched to a month to month tenancy after January 31, 2014. Rent was initially payable on the first of each month in the amount of \$875.00 and was increased to \$894.00 effective June 1, 2014. On January 14, 2013 the Tenant paid \$437.50 as the security deposit.

The Landlord testified that when the Tenant failed to pay April 1, 2014 rent she posed a 10 Day Notice to the Tenant's door. The Tenant did not pay the rent in full within the required five days but has made payments throughout the past two months as follows:

April 2, 2014	\$200.00
May 7, 2014	\$800.00
May 29, 2014	\$875.00
May 29, 2014	\$200.00

The Landlord testified that for each payment received the Tenant was issued a receipt stating “for use and occupancy only”. She said she advised the Tenant that they would be going through with the eviction if he did not pay the June 2014 rent in full prior to the hearing. As of the onset of this hearing the Tenant had a balance owing of \$569.00 for June rent.

In closing, the Landlord stated that they have made every attempt to get the Tenant to pay his rent in full and on time. As the Tenant has not done so they wish to proceed with their request for an Order of Possession.

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 April 5, 2014, three days after it was posted to the door, and the effective date of the Notice is April 15, 2014.

The Tenant did not dispute the Notice and despite making payments towards his rent he did not pay it in full within the required timeframes. All payments were received for “use and occupancy only” so the Landlord did not re-instate the tenancy. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **April 15, 2014**, 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 \$675.00 that was due April 1, 2014, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. The Tenant made payments towards the balance owing and rent for April 2014 rent was paid in full on May 7, 2014. Accordingly, I dismiss the Landlord’s claim for April 2014 rent.

As noted above this tenancy ended **April 15, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for May and June 2014. After applying the payments received throughout May 2014 the Tenant had paid May rent in full by May 29, 2014 and had

prepaid \$325.00 for use and occupancy for June 1, 2014; which is approximately 11 days based on a daily rate of \$29.50.

The Landlord will not regain possession of the unit until after service of the Order of Possession. That being said, the Landlord is required to minimize any potential loss by seeking a new tenant for as soon as possible. Accordingly, I decline to award a monetary order for use and occupancy for the remaining days in June 2014 at this time and grant the Landlord leave to reapply for any additional loss they may suffer.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

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

Conclusion

The Landlord has been issued an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord may withhold the one time award of **\$50.00** from the Tenant's security deposit; as full compensation for recovery of their filing fee.

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: June 10, 2014

Residential Tenancy Branch

