



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Selkirk Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on June 10, 2014. Canada Post tracking numbers were provided by the landlord's agent in verbal testimony. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?

- Is the landlord entitled to a monetary Order to recover rent owed?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord's agent testified that this fixed term tenancy started on March 01, 2006 and reverted to a month to month tenancy on March 01, 2007. Rent for this unit was \$715.00 and increased to \$870.00 plus parking for four vehicles of \$80.00. Rent and parking fees are due on the 31st of each month. The tenant paid a security deposit of \$357.50 on February 25, 2006.

The landlord's agent testified that the tenant failed to pay the rent on May 01, 2014. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on May 04, 2014. This was posted on the tenant's door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on May 14, 2014. The tenant did make a payment of \$325.00 for rent and \$80.00 for parking on May 07, 2014. This was accepted by the landlord for use and occupancy only. The balance of rent for May of \$545.00 remains unpaid. Since that time the tenant has failed to pay rent for June, 2014 of \$870.00 and for July, 2014 of \$870.00. The total amount of unpaid rent is now \$2,285.00. The total of unpaid parking is \$160.00.

The landlord has applied to retain the tenant's security deposit and any accrued interest in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I am satisfied that there is outstanding rent for May, June and July, 2014 of \$2,285.00 and outstanding parking fees of \$160.00. Consequently, it is my decision that the landlord is entitled to recover these amounts to a total of **\$2,445.00**.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$357.50 plus accrued interest of \$12.38 in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent and parking	\$2,445.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$369.88)
Total amount due to the landlord	\$2,125.12

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door it was deemed served three days after posting on May 07, 2014. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession for two days after service upon the tenant pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,125.12** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondent and is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court 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: July 31, 2014

Residential Tenancy Branch

