



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTHSTAR LYON HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL, MNR, MNDC, MNSD, ET

Introduction

This hearing addressed the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for an Order of Possession for Unpaid Rent, pursuant to section 55 of the *Act*.

The tenant did not participate in the conference call hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that on November 17, 2016 he sent by registered mail a 10 Day Notice to End Tenancy ("10 Day Notice") to the tenant. The landlord produced the Canada Post tracking number and a copy of the 10 Day Notice at the hearing. Based on the testimony of the landlord and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on November 20, 2016, the 3rd day after its posting.

The landlord testified that he served the tenant with the landlord's Application for Dispute Resolution ("Application for Dispute Resolution") by Registered Mail on December 1, 2016. The Canada Post tracking number for this document was provided at the hearing. I find that pursuant to section 89 and 90 of the *Act*, the tenant was deemed served with the Application for Dispute Resolution on December 4, 2016, three days after its posting. At the outset of the hearing the landlord amended his Monetary Order of \$3,520.00, to \$5,320.00. This reflected unpaid rent for December 2016 and January 2017.

The landlord testified that he was no longer pursuing an Order of Possession as the tenant had moved out on December 10, 2016. As the landlord has withdrawn his application for an Order of Possession, I dismiss that portion of this application.

Pursuant to section 64(3)(c), I have amended the landlord's spelling of the municipality to that is shown at the beginning of this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The landlord testified that this tenancy began “over a year ago” but that he didn’t remember the exact date. He continued by saying that no rental agreement existed between himself and the tenant and that “nothing was written down.” The landlord stated that rent was set at \$900.00 per month and no security or pet deposits were collected.

The landlord said that he issued a 10 Day Notice to the tenant on November 17, 2016 for \$3,520.00 based on rent that had not been paid for August, September, October and November 2016.

When asked to comment on the \$80.00 discrepancy between the amount requested and the correct amount reflected by the number of months unpaid multiplied by the monthly rent; the landlord explained that he paid the tenant \$80.00 to perform some general cleaning and maintenance work around the property and therefore subtracted that from what the tenant owed.

Analysis

The landlord provided testimony that rent has not been paid since August 2016. I accept this uncontested evidence offered by the landlord.

The landlord explained that immediately following the tenant vacating the rental unit on December 10, 2016, his building manager advertised the availability of the suite on the internet. Despite their efforts, they were unable to find a tenant willing to move into the apartment until January 1, 2017. Section 7(2) of the *Act* states;

A landlord or tenant who claims compensation for damage or loss that results from the other’s non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss

It is for this reason that I am awarding the landlord rent for the entire month of December 2016, as I find that the landlord has fulfilled the duty to mitigate the tenant’s exposure to losses.

Pursuant to section 67 of the *Act*, I issue the attached monetary award that includes the landlord’s application for \$4,520.00 in unpaid rent for the months of August, September, October, November and December 2016.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application for and Order of Possession is withdrawn.

I issue a Monetary Order of **\$4,520.00** in the landlord's favour under the following terms, which enables the landlord to recover unpaid rent and the filing fee for this application.

Item	Amount
Unpaid rent for August 2016	\$900.00
Unpaid rent for September 2016	900.00
Unpaid rent for October 2016	900.00
Unpaid rent for November 2016	900.00
Unpaid rent for December 2016	900.00
Filing Fee	100.00
Minus Labour from tenant	(-\$80.00)
Total =	\$4,520.00

Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 13, 2017

Residential Tenancy Branch