

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep all or part of the pet and or security deposit, 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 Tenants for this application.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on February 12, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenants are deemed to be served the hearing documents on February 17, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord, Property Manger, Senior Property Manager, and Resident Manager appeared, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one attended on behalf of the Tenants despite them being served with notice of today's hearing in accordance with the Act.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order a) for unpaid rent, and b) to keep all or part of the pet and or security deposit, and c) for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord confirmed the month to month tenancy agreement began on August 16, 2007 and the current monthly rent is payable on the first of each month in the amount of \$850.00. The Tenants paid a security deposit of \$387.50 on August 13, 2007.

The Landlord testified the Tenants failed to pay their January 2010 rent and February 2010 rent so on February 2, 2010 the Resident Manager served the Tenants with the 10 Day Notice to End Tenancy for unpaid rent.

The Resident Manager testified she issued the 10 Day Notice on February 2, 2010 listing \$850.00 as being unpaid and was due on February 2, 2010. The Resident Manager confirmed the Tenants were issued a letter requesting the \$475.00 balance owing for January 2010 rent and were not issued a 10 Day Notice for the January 2010 unpaid amount.

The Senior Property Manager argued the 10 Day Notice issued on February 2, 2010 is correct because they had entered into a verbal agreement with the Tenants that they could pay their rent on February 2, 2010.

Analysis

All of the testimony and documentary evidence was carefully considered.

Upon review of the 10 Day Notice to End Tenancy, I find the Notice not to be completed in accordance with the requirements of the Act. I do not accept the Senior Property Manager's argument that they made arrangements for rent to be due on February 2, 2010, as a Notice cannot be issued on the date that rent is due, nor can a Landlord change the standard term of a tenancy agreement of when rent is payable.

Based on the aforementioned the 10 Day Notice to End Tenancy issued on February 2, 2010 is invalid.

As the Landlord has not been successful with their application I decline to award them recovery of the filing fee.

Conclusion

I HEREBY ORDER that the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated February 2, 2010, is cancelled and is without force or effect.

I HEREBY DISMISS the Landlord's application, without leave to reapply.

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 31, 2010.

Dispute Resolution Officer