



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPC, OPB, MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, an Order to keep all or part of the security deposit and to recover the cost of the filing fee. The landlords withdrew their application for an Order of Possession for cause and for breach of an agreement with the landlords and for damages to the rental unit, site or property and for money owed or compensation for damage or loss under the Act. Their Monetary claim has been amended accordingly.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on July 30, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on August 04, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

The landlords testify that this is their second application as they were unable to connect to the first hearing scheduled for July 27, 2010 and waited on the call for two hours. The landlords were given leave to reapply and this hearing was scheduled in its place.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Are the landlords entitled to an Order of Possession due to unpaid rent?
- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to keep the tenants security deposit?

Background and Evidence

This tenancy started on February 20, 2010. This is a fixed term tenancy which is due to expire on February 19, 2011. Rent for this unit was agreed at \$1,450.00 per month and it was originally agreed that this would be due on the 20th of each month however this was changed to the 28th of each month by the tenants. The tenants paid a security deposit of \$725.00 on February 20, 2010.

The landlords testify that the tenants approached them about renting the house. The landlord drew up intent to rent form and gave this to the tenants to fill in. By this time the tenants had moved into the rental property. The landlords approached the tenants and agreed that as the house required some cleaning and minor repairs that the tenants could pay a reduced rent for the first month of \$725.00. The tenants gave the landlords their security deposit of \$725.00 and paid the reduced rent of \$725.00.

The landlords testify that the tenants did not return the intent to rent form and when they arranged a meeting the tenants refused to fill this form or the tenancy agreement. The female landlord stated that the tenants became very upset and angry when they saw that this was a no pet rental as they had dogs and would not sign the tenancy agreement until the landlords did some work at the house. At this time the landlord's state the tenants also said that they did not move in until February 28 and therefore the 28th of each month will be the day rent will be paid by them. The landlords asked the tenant for a pet deposit and agreed they could keep their pets. The tenants did not pay the pet deposit.

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The landlords state that the tenants agreed they would clean and make minor repairs up to the sum of \$725.00 for the rent rebate. They were supposed to give the landlords receipts for any work carried out and any additional work over the \$725.00 must be agreed by the landlord before the tenants started it. The landlords claim it was noticed that there was a problem with the water line on the property. The tenants agreed to do this repair and stated it would only cost \$500.00 which would be part of the \$725.00 rent rebate. The tenants made a repair but the landlord's state they believe in doing so they damaged the sewage pipe. The tenants then stated this repair was over the \$725.00 and they withheld their rent for April, 2010 of \$1,450.00 to cover this work without the landlords consent. On March 26, 2010 the landlords served the tenants with a 10 Day Notice to End Tenancy for unpaid rent.

The landlords testify that the tenants withheld \$50.00 from their rent due on April 28, 2010 and told the landlords they had deducted it for their arbitration fee. The landlords state the tenants did not give them any arbitration papers.

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The landlords testify that the tenants told them that they had paid to clean a carpet in the house out of the rent rebate. However, when the landlords saw the carpet it did not appear to have been cleaned. The landlords asked the tenants for the receipt as agreed but did not receive this. The landlords contacted the carpet cleaning company the tenant said they had used and they had no record of coming to clean the carpet. The tenants withheld \$480.00 of their rent due on May 28, 2010. On May 29, 2010 the landlords served the tenants with another 10 Day Notice to End Tenancy for unpaid rent. On June 11, 2010 the tenants gave the landlords a Money Order for \$530.00 this was accepted by the landlords for use and occupancy only and a receipt was given to the tenants stating this. The landlords served the tenants with three more Notices to End Tenancy for unpaid rent; one on June 30, 2010, one on July 02, 2010 and one on July 29, 2010

For the following two months of July and August the tenants did not pay rent. The landlords seek to recover the outstanding rent to the sum of \$4,350.00.

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The landlord's seek o recover unpaid utilities. They testify that the tenants were informed at the start of the tenancy that they must put both the Gas and Hydro into their own names. The tenants did not do this and the landlords contacted the City to inform them. The landlords followed this up with a letter to the tenants and a breach letter outlining what bills were outstanding. The landlords state the tenant did then put the city utilities into their own name but not the Gas. The landlords state the tenants now owe a total of \$596.99 in electricity bills owed to the city and \$417.57 in Gas bills owed to Terasan Gas.

The landlords have also requested to recover the sum of \$30.00 for costs incurred in registered mail fees and seek to recover the filing fees paid for each application to the sum of \$150.00.

The landlords seek to keep the tenants security deposit of \$725.00 in partial payment of the outstanding rent.

Analysis

The tenants 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 have considered the evidence before me from the landlords.

Section 26 of the *Act* states: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. It is my decision that the tenants did not have a right under the *Act* nor is there any evidence to show they have filed an application for dispute resolution to deduct all or part of the rent. The tenants have not appeared at the hearing to show any evidence as to why they felt they had a right under the *Act* to withhold this rent. Consequently, I find the tenants owe rent to the landlord to the sum of **\$4,350.00**.

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I further find the tenants have not paid any utility bills owed by them to either the landlord, the City or to Terasan Gas. Consequently, I find the landlords are entitled to recover the amount of **\$1,014.56** to satisfy these utility bills.

With regards to the landlords claim to recover the costs incurred in sending documents to the tenants by registered mail. I find this is the landlord's choice to use Canada Post as a method of service and therefore they are not entitled to recover the cost of postage to the sum of \$30.00.

With regards to the landlords claim to recover both filing fees from the tenants; I find there is evidence to show that the landlords did dial into the first conference call held in July, 2010 and they incurred a filing fee of \$50.00. The landlords had to re-submit their application and incurred additional costs of \$100.00 in filing fees. Consequently, I find the landlords are entitled to recover **\$150.00** from the tenants.

I find the landlords have established their claim for unpaid rent and utilities and therefore Order them to keep the tenants security deposit of **\$725.00** in partial satisfaction of their claim. A Monetary Order has been issued pursuant to section 67 and 72(1) of the *Act* for the following amount:

Unpaid rent	\$4,350.00
Filing fees	\$150.00
Subtotal	\$5,514.56
Less security deposit	\$725.00
Total amount due to the landlords	\$4,789.56

Section 46(4) of the *Act* states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a tenant must either pay the amount set out on the Notice or apply for dispute resolution; If a tenant fails to do either of these things, then under section 46(5) of the *Act*, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time.



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The landlords have served the tenants with six separate 10 Day Notices to End Tenancy. The tenants have failed to pay all the outstanding rent on any of these Notices and I have no evidence to show that they have applied for Dispute Resolution within five days of receiving any of the Notices.

Based on the above, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to section 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 **\$4,789.56**. The order must be served on the respondents 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 tenants. This order must be served on the Respondents 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: August 19, 2010.

Dispute Resolution Officer