



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes – OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent only. The tenants did not attend.

The landlord provided documentary confirmation that the tenants were served with notice of this hearing via registered mail on September 16, 2010. I am satisfied the tenants have been served in accordance with the *Residential Tenancy Act (Act)* and sufficiently for this hearing.

The landlord's agent testified at the outset of the hearing that they had learned as of September 27, 2010 that the tenants had vacated the rental unit. The agent noted that they had tried to contact the tenants on a weekly basis by providing the tenants with 24 hour notice for an inspection of the unit.

On each occasion the landlord entered it appeared the tenants were still living in the rental unit until the landlord's visit of September 27, 2010 when all belongings had been removed.

As the tenants are no longer in possession of the rental unit, I amend the landlord's application to exclude matters related to an order of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began on September 1, 2009 as a month to month tenancy for a monthly rent in the amount of \$1,110.00 due on the 1st of the month with a security deposit of \$555.00 paid on August 31, 2009.

The landlord submitted the following evidentiary material:

- A copy of a Notice of Rent Increase issued to the tenants on May 7, 2010 with an effective date of September 1, 2010 increasing the rent to \$1,145.52; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 6, 2010 with an effective vacancy date of August 19, 2010 due to \$805.00 in unpaid rent;
- A copy of a tenant ledger showing the tenants have arrears in rent of \$5.00 for the month of June 2010; \$800.00 for the month of August; and \$1,145.52 for the month of September, 2010.

The landlord is seeking compensation for the rental arrears from June, August, and September 2010 and seeking lost income for October 2010.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the months of June and August 2010 and testimony that the tenants failed to pay the rent for September 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on August 6, 2010.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on August 9, 2010 and the effective date of the notice is August 19, 2010. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the Act.

Based on the foregoing, 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.

While the landlord is seeking compensation for lost income for October 2010, the landlord initiated the end of the tenancy by issuing a 10 Day Notice to End Tenancy for Unpaid Rent and had the tenants vacated in accordance with that notice the tenancy would have ended on August 19, 2010.

While the tenancy did end on August 19, 2010 the tenants' failure to vacate resulted in them overholding and the landlord is entitled to rent only for the period of overholding and not for any amounts of lost rent beyond that period. I therefore dismiss this portion of the landlord's application.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,000.52** comprised of \$1,950.52 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$555.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,445.52**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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: October 21, 2010.

Dispute Resolution Officer