



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent and NSF charges, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the testimony of both parties, I find that the Tenants were served with a 10 day Notice to End Tenancy for non-payment of rent on October 14, 2010, by personal service. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days and the Tenants had five days to dispute the Notice.

The Agent for the Landlord testified that the Tenants had failed to pay rent for September, October and November of 2010, in the amount of \$915.00 payable for each month. The Landlord was concerned that the Tenants would also fail to pay rent for December of 2010, as the hearing was held on the last day of November 2010.

The Tenant testified that his parents had a problem with their bank as someone pretending to be them had taken all their money out.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to

have accepted that the tenancy ended on the effective date of the Notice, October 28, 2010.

The Agent for the Landlord suggested that the order of possession be effective at 1:00 p.m. on December 31, 2010, provided the Application be amended to include an amount equal to one month of rent for December. The Agent suggested that if all money due was paid by the end of December that the Landlord might allow the tenancy to continue. The Tenant agreed to this and confirmed the Tenants would try to pay all rent arrears by the end of December.

Therefore, I find that the Landlord is entitled to an order of possession effective **at 1:00 p.m. on December 31, 2010**. This order may be filed in the Supreme Court and enforced as an order of that Court.

I allow the Landlord to amend the Application to include rent for an additional one month. The Agent for the Landlord confirmed that if the Landlord must enforce the monetary order they would deduct any monies paid by the Tenants against the outstanding rent due in the order.

I find that the Landlord has established a total monetary claim of **\$3,710.00** comprised of four months of rent and the \$50.00 fee paid by the Landlord for this application. The claim for NSF charges is dismissed, as this was not included in the tenancy agreement.

Therefore, I grant the Landlord an order under section 67 for the balance due of **\$3,710.00**. This order 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: November 30, 2010.

Dispute Resolution Officer