



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*. The landlord declared that she served the tenants in person on December 04, 2010.

The landlord appeared only to give affirmed testimony that serve of the hearing documents took place as declared and her agent continued with the hearing. The landlords agent gave affirmed testimony, was 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*.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlords' agent confirms that this month to month tenancy started on January 01, 2009. The rent for this basement unit is \$700.00 per month and is due on the first of each month. The tenants paid a security deposit of \$350.00 on January 01, 2009.

The landlords' agent states the tenants were served a 10 Day Notice to End Tenancy for unpaid rent dated November 03, 2010. He was unsure when this Notice was served to the tenants. This Notice states the tenants owe \$250.00 in unpaid rent due on October 01, 2010 and also states the tenants owe \$800.00 for utilities. The landlords' agent states that this is an error and the amount stated on the Notice as owed for utilities is in fact outstanding rent owed for November, 2010.

The landlords' agent states he served the tenants with another 10 Day Notice to End Tenancy on November 19, 2010. The landlord has provided a proof of service of this document signed by the female tenant. This Notice states the tenants owe \$150.00 in unpaid rent due on October 01, 2010 and \$800.00 in unpaid utilities due on November 01, 2010. The landlords' agent states this again is an error and the \$800.00 owed is in fact owed for rent not utilities for November, 2010. The landlords' agent states the tenants did not pay rent for December, 2010 on the day it was due but paid \$1,000.00 on or about December 27, 2010. The landlords agent states the tenant now owe \$400.00 in outstanding rent.

The landlord has provided a written declaration from the tenants in evidence that states they will be up to date with rent (\$1,050.00) as of the 19 of November, 2010. This was dated November 04, 2010 and it also shows the tenants paid \$100.00 on November 19, 2010.

The landlord seeks an Order of Possession due to unpaid rent of \$400.00 and a Monetary Order to recover this sum.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of the landlord concerning service of the hearing documents to the tenants and the testimony of the landlords' agent. Section 26 of the *Act* states a tenant must pay rent on the day it is due. It is clear from the landlords' documentary evidence and the testimony of the landlords' agent that the tenants have been late with their rent on more than one occasion. Although there are

inconsistencies concerning the amount of rent now owed by the tenants, I accept the landlords' agents' testimony that the tenants now owe a balance of rent of \$400.00. Consequently, it is my decision that the landlord is entitled to a Monetary Order to recover the sum of **\$400.00** from the tenants pursuant to section 67 of the *Act*.

With regard to the landlords application for an Order of Possession for unpaid rent; I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent on November 19, 2010, in person, pursuant to section 88 of the *Act*. 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 pay the outstanding rent within five days; and did not apply to dispute the Notice within five days. As the effective date of this Notice was recorded as November 19, 2010 on the Notice this date has been amended to November 29, 2010 (the 10th Day after service of the 10 Day Notice) pursuant to section 53 of the *Act*. The tenants paid a sum of \$1,000.00 towards their rent arrears on December 27, 2010. As this was past the date the tenancy should have ended the landlord was able to accept this payment without reinstating the tenancy.

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 and grant the landlord an order of possession pursuant to section 55 of the *Act*.

As the landlord has been successful with her application she is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$450.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.



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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: December 29, 2010.

Residential Tenancy Branch