



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

For the tenants – CNR, MNDC, FF

For the landlord – OPR, MNR, MNSD, FF

Introduction

This hearing was set to deal with two applications one brought by the male tenant and one by the landlord. The tenant failed to appear for the hearing and that application is dismissed without leave to reapply. The hearing continued and dealt with the landlords' application to obtain an Order of Possession and a Monetary Order for unpaid rent. The landlords also seek an Order to keep all or part of the security deposit 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*; they were handed to the tenants in person on March 11, 2011. The landlord gave affirmed testimony that service of the hearing documents took place as declared.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his 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*.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This month to month tenancy started on January 01, 2011 although the landlord states he allowed the tenants to move in on December 12, 2010 without any rent payments due until January 01, 2011. The landlord testifies that rent for this unit is \$740.00 per month and is due on the first of each month and each tenant was to pay \$370.00 each month. The landlord testifies that the male tenant arranged for social assistance to pay his security deposit of \$185.00 on January 11, 2011. The landlord testifies that he had a verbal tenancy agreement with the tenants.

The landlord testifies that the male tenant arranged for social assistance to pay his share of the rent of \$370.00 for January and February, 2011 directly to the landlord. However, he states nothing was paid for March, 2011. The female tenant did not pay any of her rent for January, February or March, 2011. The landlord issued two 10 Day Notices to End the Tenancy for unpaid rent on March 02, 2011. These were handed to the tenants in person on this date. The Notice for the male tenant states that he owes rent for March, 2011 of \$370.00 and the Notice for the female tenant states she owes rent of \$1,295.00 up to March 01, 2011. The landlord states this sum also includes her unpaid security deposit of \$185.00. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on March 11, 2011. The tenants did not pay the outstanding rent and did not dispute the Notice within five days. The total amount of unpaid rent is now \$1,485.00.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible and seeks to recover his filing fee.

Analysis

The tenants did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing and despite the male tenant having filed an application himself. Therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me. When two tenants share a rental unit they are both jointly responsible to pay the rent. They must also pay the rent on the

day it is due. The landlords' undisputed testimony states that rent is due on the first day of each month. Consequently, I find that the landlord is entitled to recover rent arrears for of **\$1,485.00** pursuant to s.67 of the *Act*.

The landlord also seeks to recover the unpaid security deposit of \$185.00 however the landlord must collect a security deposit at the start of a tenancy or serve a tenant with a One Month Notice to End Tenancy because the security deposit was not paid within 30 days. Consequently the landlord may not now claim to have the deposit paid by the tenants and this section of his monetary claim is dismissed

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenants security deposit of \$185.00 in partial payment of the rent arrears.

As the landlord has been largely successful in this matter, he is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent	\$1,485.00
Subtotal	\$1,300.00
Plus filing fee	\$50.00
Total amount due to the landlords	\$1,350.00

I accept that the tenants were served the 10 Day Notices to End Tenancy for unpaid rent, pursuant to s. 88 of the *Residential Tenancy Act*. The Notices state that the tenants have 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 nor apply to dispute the Notice to End Tenancy within five days.

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 s. 55 of the *Act*.

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,350.00**. 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 landlords 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.

The tenants' application is dismissed in its entirety without leave to reapply.

As the male tenant has failed to appear for this hearing today, I order that the male tenant pay the filing fee of \$50.00 that was previously waived to the director of the Residential Tenancy Office.

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 24, 2011.

Residential Tenancy Branch