



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

Service of the hearing documents, by the Landlord to each Tenant, was completed via registered mail on June 7, 2011. Canada Post receipts were provided in the Landlord's evidence. Each Tenant is deemed to have received the hearing documents June 12, 2011, in accordance with section 90 of the Act.

The parties for the Landlord appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one attended the hearing on behalf of the Tenants despite them being served notice of today's hearing in accordance with the Act.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. Has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach?

Background and Evidence

The fixed term tenancy commenced on March 1, 2011 and is set to switch to a month to month tenancy after one year. The Tenants paid a security deposit in the amount of \$425.00 on March 1, 2011. Rent is payable on the first of each month in the amount of \$850.00.

The Landlords testified that when the Tenants failed to pay the full May 2011 rent a 10 Day Notice to End Tenancy was issued and personally served to the Tenants by the

Agent on May 28, 2011. The Agent explained that Income Assistance pays a portion of their rent in the amount of \$550.00 and a payment cheque is mailed directly to the Landlord. The Landlord had already received the partial payment for the payment month of June prior to issuing the 10 Day Notice. The Tenants are required to pay the difference of \$300.00 on or before the first of each month and have not paid this amount for May or June.

The Agent confirmed that he is aware that if they serve the Order of Possession on the Tenants and proceed with the eviction then they will not be able to keep the Income Assistance payment when it arrives for the July 2011 rent.

Analysis

I have carefully considered the aforementioned and the evidence before me which included among other things a copy of the tenancy agreement, Canada Post receipts, and the 10 Day Notice.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenants.

I have considered the date in which service of the hearing documents were sent and when the Canada Post registered mail was first sent in relation to the Canada Post labour dispute. I find that although Canada Post service had not ceased it may have still been interrupted. That being said I find this application meets the requirements to be reviewed under section 55(4) of the *Act*, whereby neither party needed to be in attendance at the hearing.

Order of Possession. I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act* and the Tenants failed to pay the rent in full within 5 days after receiving this notice.

In the absence of an application to dispute the Notice, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, June 7, 2011, and must vacate the rental unit to which the notice relates pursuant to

section 46(5) of the *Act*. Based on the aforementioned I hereby approve the Landlord's request for an Order of Possession.

Claim for unpaid rent. The Landlord claims for unpaid rent of \$600.00 which is comprised of \$300.00 for May 2011 and \$300.00 owing for June 2011. Section 26 of the *Act* states that a Tenant must pay rent when it is due in accordance with the tenancy agreement. Therefore I find the landlord has met the burden of proof to establish a loss and I hereby approve her request for unpaid rent in the amount of **\$600.00**.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served on the Tenants.

The Landlord's copy of this decision will be accompanied by a Monetary Order in the amount of **\$600.00**. This Order is legally binding and must be served upon the Tenants. 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: June 27, 2011.

Residential Tenancy Branch

