



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for an order of possession, a monetary order for unpaid rent and money owed for damage or loss, to retain the security deposit, and to recover the filing fee.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Have the tenants breached the Residential Tenancy Act (the “Act”) or tenancy agreement, entitling the landlords to an Order of Possession and order for monetary relief?

Background and Evidence

This one year, fixed term tenancy began on May 1, 2011, monthly rent is \$1,100.00 and the tenants paid a security deposit of \$550.00 on April 25, 2011.

The tenancy agreement, which was entered into evidence by the landlords, also indicated that the tenants were to put the hydro and gas accounts into their name and be responsible for 2/3 of the bill.

The landlords gave affirmed testimony and supplied evidence that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) on June 14, 2011, via posting on the door. The Notice stated the amount of unpaid rent was \$1,100.00 as of June 1, 2011. The Notice also stated the tenants failed to pay the amount of \$440.00 for utilities after written demand on May 1, 2011.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenants had five days to dispute the Notice.

The landlords testified that the tenants failed to pay any rent after receiving the Notice and now also owe for the month of July.

Despite the statement on the Notice, the landlords acknowledged that written demand for utilities had not been given to the tenants.

The tenant did not dispute that rent had not been paid.

Analysis

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

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.

I find that the landlords are entitled to an order of possession effective **two days** after service on the tenants. This order is a **final, legally binding order**, and may be filed in the Supreme Court should enforcement become necessary.

I find that the landlords have established a total monetary claim of **\$2,250.00** comprised of outstanding, unpaid rent of **\$2,200.00** for June and July and the **\$50.00** fee paid by the landlords for this application.

At the landlords' request, I allow the landlords to retain the deposit of \$550.00 in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$1,700.00**.

I am enclosing a monetary order for **\$1,700.00** with the landlords' Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court (Small Claims) should the tenants fail to comply with this monetary order.

As to the landlords' request for a monetary order for unpaid utilities, Section 46 (6) of the Act states that a landlord may serve a Notice to End Tenancy and treat unpaid utility charges as unpaid rent if

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

I find that the landlords have not made written demand on the tenants for unpaid utility charges as of the day of the hearing and further, have not provided documentary proof of the charges, due to the postal strike. I therefore find that the landlords have not established an entitlement to a monetary order for unpaid utility charges, and I **dismiss** that portion of their application, **with leave to reapply**.

Conclusion

The landlords are granted an Order of Possession.

The landlords are granted a monetary order in the amount of \$1,700.00.

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: July 19, 2011.

Residential Tenancy Branch