



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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, to retain the tenants' 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 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 landlord to an Order of Possession and monetary relief?

Background and Evidence

I heard testimony that this original, fixed term tenancy began on November 18, 2009, is continuing now on a month to month basis, monthly rent is \$1,600.00 and the tenants paid a security deposit of \$800.00 at the beginning of the tenancy.

The landlord 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 July 11, 2011, via personal delivery to an adult in the rental unit. The tenants acknowledged receiving the Notice on that day. The Notice stated the amount of unpaid rent was \$1,600.00 as of July 4, 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 landlord testified that since the issuance of the Notice, the tenants made three payments of rent, totalling \$1,600.00, those being \$500.00 on July 26, \$500.00 on July 31, and \$600.00 on August 5, 2011. The tenants have not paid rent for August and currently owe the landlord \$1,600.00.

The tenants agreed that the July rent was paid in instalments as testified to by the landlord and that rent for August was not paid. The tenant testified that they have tried

to comply with their rental obligation, but due to circumstances with their business, have been unable to make a timely payment.

Analysis

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

The tenants paid the outstanding rent beyond the allowed five (5) days and did not apply to dispute the Notice; the tenants 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 landlord is entitled to an order of possession effective, **2 days after service on the tenants**. This order is a **final, legally binding order**, and may be filed in the Supreme Court should the tenants fail to comply with this order.

I find that the landlord has established a total monetary claim of **\$1,650.00** comprised of outstanding rent of **\$1,600.00** for August and the **\$50.00** fee paid by the landlord for this application.

At the landlord's request, I allow the landlord to retain the tenants' security deposit and interest of **\$800.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$850.00**.

I am enclosing a monetary order for \$850.00 with the landlord's 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.

Conclusion

The landlord is granted an Order of Possession, may keep the security deposit in partial satisfaction of the monetary claim and is granted a monetary order for the balance due of **\$850.00**.

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: August 24, 2011.

Residential Tenancy Branch