



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 for unpaid rent and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement by failing to pay rent?
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 Landlord initially entered into a fixed term tenancy agreement that began on June 1, 2009 and switched to a month to month tenancy after June 1, 2010 with the current Tenant's mother. The agreement listed the respondent as a tenant from the outset of this tenancy. In approximately September 2010 the Tenant's mother moved out and the Landlord agreed to hold the security deposit of \$425.00 that was paid on April 29, 2009 for a new agreement which included both named respondents to this dispute as Tenants. Rent is payable on the first of each month in the amount of \$850.00.

The Landlord affirmed that when the Tenants failed to pay August 1, 2011 rent a 10 Day Notice to End Tenancy was issued and served to the female Tenant on August 6, 2011 at 1:30 p.m. Rent remains unpaid for August and September for the total amount of \$1,700.00.

The Tenant confirmed that after they received the 10 Day Notice for unpaid rent they went to the *Residential Tenancy Branch* and were told if they paid their rent within five days the Notice would be cancelled. He stated that he called the Landlord sometime between August 10 and 15th to request her bank account number so they could put the rent her account but she refused. He confirmed they had always paid their rent by directly depositing it into the Landlord's account. He had recently lost her account number which prevented him from depositing the rent on time. He confirmed rent remains unpaid for August and September 2011.

The Landlord denies receiving a call from the Tenants in August requesting her account number. She stated that they have always known her account number. They did call her in June 2011 to request her account number claiming that is why rent was late and at that time she told them they had her number so pay the rent. The rent was paid the next day which supports they had her bank account number all along.

Analysis

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their case. The Tenants have the burden to prove their rent was paid while the Landlord has the burden to prove rent remains unpaid. Accordingly, the evidence before me was verbal testimony which supports the rent for August and September 2011 remains unpaid.

Where a tenant is served a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to Section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

In this case the Notice was served to the Tenants on August 6, 2011. Accordingly I find the effective date of the Notice is August 16, 2011, pursuant to Section 90 of the Act. Since the Tenants did not pay the outstanding rent or dispute the Notice I find the tenancy ended on August 16, 2011.

The Landlord claims for unpaid rent of \$1,700.00 (2 x \$850.00) for August and September 2011 rent, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have failed to comply with a standard

term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The Tenants continue to occupy the unit after the tenancy ended August 16, 2011; accordingly I award the Landlord a monetary claim in the amount of **\$1,700.00** which consists of unpaid rent for August 2011 of \$850.00 and overholding charges including loss of rent for September 2011 of \$850.00.

The Landlord has been successful with her application; therefore I award recovery of the **\$50.00** filing fee.

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 upon the Respondent Tenants.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,750.00** (\$1,700.00 + \$50.00). This Order is legally binding and must be served upon the Respondent 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: September 08, 2011.

Residential Tenancy Branch