



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 to recover unpaid rent, a Monetary Order to keep all or part of the security deposit and to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*; they were given to the tenants in person on August 17, 2011. The tenant attending confirmed they had received the hearing documents.

Both parties appeared, gave their testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, and make submissions to me. On the basis of the evidence presented at the hearing, a decision has been reached:

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

Both parties agree that the tenancy started on November 01, 2009. This is now a month to month tenancy and rent is \$850.00 per month and is due on the first of each month. The

tenants paid a security deposit of \$425.00 and a pet deposit of \$425.00 on October 23, 2009.

The landlords' agent testifies that the tenants did not pay all rent when it was due on August 01, 2011. On August 02, 2011 the tenants paid \$400.00 towards the rent arrears. On August 03, 2011 the landlord served the tenants with a 10 Day Notice to End Tenancy for unpaid rent by posting this to the tenant's door. The amount owing at this time was \$450.00 plus a \$25.00 late fee for August. The tenants paid \$200.00 on August 12, 2011 and \$275.00 on August 29, 2011. These payments were accepted by the landlord for use and occupancy only. Since that time the tenants have not paid rent for September, 2011 and leave a balance of unpaid rent at \$850.00 plus another \$25.00 late fee. The landlord seeks an Order of Possession to take effect two days after service of the Order.

The landlord seeks an Order to keep the tenants security deposit and pet deposit to offset against the unpaid rent.

The tenant attending does not dispute that they owe rent for September, 2011. The tenant explains that she has been sick and could not pay the rent. The tenant agrees to pay the rent arrears on September 25, 2011.

Analysis

There is no dispute about the amount of outstanding rent by the tenants. Consequently, I find the landlord is entitled to recover rent arrears for September, 2011 of \$850.00. I further find the landlord may recover a late fee of \$25.00 for September, 2011 as agreed to in the tenancy agreement in place between the parties. Consequently the landlord is entitled to a monetary award of **\$875.00** pursuant to s. 67 of the *Act*.

I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit of \$425.00 and pet deposit of \$425.00 in partial payment of the rent arrears.

As the landlord has been successful in this matter I find the landlord may recover the **\$50.00** filing fee paid for this application from the tenants pursuant to s.72(1) of the *Act*. The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent and late fee for September	\$875.00
Filing fee	\$50.00
Less security deposit and pet deposit	(-\$850.00)
Total amount due to the landlord	\$75.00

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to s. 88 of the *Act*. The Notice states that the tenants had 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. The tenants did pay the rent after five days and this was accepted for use and occupancy only and did not reinstate the tenancy.

Based on the foregoing, I find that the tenants are conclusively presumed, under s. 46(5) of the *Act*, to have accepted that the tenancy ended on the date of the Notice. The notice is deemed to have been received by the tenants on August 06, 2011, the third day after posting to the door and the effective date of the notice is amended to August 16, 2011 pursuant to section 53 of the *Act* and I grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$75.00**. The order must be served on the tenants and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on **two days** after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

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 15, 2011.

Residential Tenancy Branch