



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of possession, a monetary Order and an Order to retain the security deposit in partial satisfaction of the claim.

Both Tenants were served with the Notice and Application. One of the Tenants attended the Hearing as the other was at work. The Tenant who did not attend the Hearing has signed a proof of service document which the Landlord has provided as evidence of service. I am satisfied that both Tenants were properly served with the Notice and Application. The Tenant attending the Hearing gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of possession and monetary relief?

Background and Evidence

Based on the testimony of the attending Tenant she agrees with the Landlord's testimony that they were served with a Notice to End Tenancy for non-payment of rent on September 22, 2011 in person. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice. The attending Tenant agrees that they were supposed to move out at the beginning of October 2011. They have not done so. The attending Tenant testified that they agree to vacate the rental unit on October 15, 2011. At the Hearing the Landlord and the attending Tenant agreed that \$4,690.00 is outstanding in unpaid rent to September 30, 2011. They also agreed that because the Tenants wish to stay in the rental unit until October 15, 2011 that further rent of \$725.00 is also owing, for a balance of \$4,765.00. The attending Tenant also agreed at the Hearing that they paid a security of deposit to the Landlord on May 03, 2006 in the amount of \$650.00. The Landlord confirmed that he has the security deposit and the interest accrued on it. The attending Tenant agreed at the Hearing that the Landlord may retain the security deposit and interest and off set it from the balance they owe in outstanding rent.

Analysis

Based on the above, the 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 to End Tenancy. At the Hearing the attending Tenant testified that they agree that they owe the outstanding rent and that they will vacate the rental unit no later than October 15, 2011.

I find that the Landlord is entitled to an Order of possession **effective at 1:00 P.M. October 15, 2011**. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord has established a total monetary claim of \$5,415.00, comprised of unpaid rent from June 2011 to September 30, 2011 in the amount of \$4,690.00 and \$725.00 unpaid rent from October 01-15, 2011.

The \$50.00 fee paid by the Landlord for this application will not be reimbursed, as the Landlord failed to apply for it on the Application.

I order that the Landlord retain the security deposit (\$650.00) and interest (\$21.90), which add up to \$671.90, in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$4,743.10**.

This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. Although it is conclusively presumed that they accept this, at the Hearing I confirmed that the Tenants agree to the outstanding balance owed to the Landlord and that the Tenants agree to end their tenancy on October 15, 2011.

The Landlord is granted an Order of possession, may keep the security deposit and interest in partial satisfaction of the claim and is granted a monetary Order for the balance due.

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: October 12, 2011.

Residential Tenancy Branch