



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MT, CNR, CNC

For the landlord – OPR, MNR, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The tenants seek more time to cancel the Notices to end tenancy. The tenants also seek to cancel the Notice for unpaid rent and the Notice to end tenancy for cause. The landlord seeks an Order of Possession for unpaid rent and a Monetary Order to recover unpaid rent. The landlord also seeks an Order to keep the tenants security deposit and to recover her filing fee.

I am satisfied that both Parties have been served with a copy of the application and a Notice of the Hearing pursuant to s. 89 of the *Act*.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Preliminary Issues

The tenants have applied for more time to cancel the Notices to end tenancy. The tenants received the One Month Notice on August 28, 2011. This Notice informs the tenants that they have 10 days to file an application to cancel it. The tenant's received the 10 Day Notice on September 02, 2011. This Notice informs the tenants they have five days to pay the outstanding rent or file an application to cancel the Notice. The tenants did not pay the

outstanding rent and filed their application on September 08, 2011. In both Notices the tenants did not comply by filing an application to cancel them within the allowable time frame. Therefore the tenants are conclusively presumed to accept the end of the tenancy on the effective dates of the Notice. Consequently the tenant's application to cancel both the 10 Day Notice to End Tenancy and the One Month Notice to End Tenancy has no merit and is dismissed without leave to reapply.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the tenants security and pet deposits?

Background and Evidence

Both parties agree that this tenancy started on June 15, 2011. Rent for this unit was agreed at \$700.00 per month due on the 1st day of each month. The tenants paid a security deposit of \$350.00 on June 17, 2011 and a pet deposit of \$200.00 on July 05, 2011.

The landlord testifies that the tenants failed to pay rent for September, 2011. A 10 Day Notice to End Tenancy was served upon the tenants on September 02, 2011. This notice informed the tenant they had five days to pay the outstanding rent or dispute the Notice. The tenants failed to pay rent within the five days and did not dispute the Notice until the sixth day. Since that time the tenants have also failed to pay rent for October, 2011 on the day it was due. The landlord testifies the tenants had told her social assistance would be paying their rent however she states she did not receive a cheque from social assistance for either of these months for these tenants but did receive rent cheques for her other tenants on social assistance on this date.

The landlord seeks to recover the unpaid rent of \$1,400.00. The landlord also seeks an Order of Possession to take effect as soon as possible.

The landlord seeks to keep the tenants security and pet deposits to a total sum of \$550.00 in partial satisfaction of these rent arrears. The landlord also seeks to recover her \$50.00 filing fee from the tenants.

The tenants testify that the landlord was sent a cheque from welfare on September 29, 2011 because this sum was taken off their welfare payment cheque. The tenants have not provided any evidence from welfare to support this. The male tenant testifies as far as he knew the rent had been paid. The tenants testify that they have not paid rent for October, 2011.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I find that the landlord is entitled to recover rent arrears for September and October, 2011 as the tenants have provided no evidence to show Septembers rent was paid by social assistance and it is the tenant's responsibility to ensure rent is paid on time each month. Consequently, the landlord is entitled to recover unpaid rent to the total sum of **\$1,400.00** pursuant to s.67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit and pet deposit to the total sum of **\$550.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, she is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent	\$1,400.00
Plus filing fee	\$50.00
Total amount due to the landlord	\$900.00

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy 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.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$900.00**. The order must be served on the Respondents 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 **two days** after service on the tenants. This order must be served on the Respondents 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: October 06, 2011.

Residential Tenancy Branch