



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MT, CNR, MNSD, FF

For the landlord – OPR, MNR, MNSD, FF

Introduction

This decision was scheduled to deal with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were due to be heard together. The hearing went ahead as scheduled the landlord and her agents dialed into the conference call but after 10 minutes the tenants had not dialed into the call. Based on this I find that the tenants have failed to present the merits of their application and the application is dismissed without leave to reapply.

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on September 17, 2011. Mail receipt numbers were provided by the landlord. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and two agents for the landlord appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

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 security deposit?

Background and Evidence

This tenancy started on June 01, 2010. Rent for this unit is \$1,200.00 per month. Rent is due on the first of each month. The tenants paid a security deposit of \$600.00 on June 01, 2010.

The landlord testifies that the tenants failed to pay rent for September, 2011 of \$1,200.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on September 07, 2011. This was posted to the tenant's door and was deemed to have been served three days after posting. This Notice stated that the tenants owed rent of \$1,200.00. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on September 17, 2011. The tenants did not pay the outstanding rent and although they did apply to dispute the Notice they have failed to appear at the hearing today. Since that time the tenants have also failed to pay rent for October, 2011. The total amount of outstanding rent is now \$2,400.00.

The landlord has applied to retain the tenants' security deposit of \$600.00 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I find that the landlord is entitled to recover rent arrears for September and October, 2011 to the sum of \$2,400.00. I have allowed the landlord to amend her monetary claim for Octobers rent as the tenants

continue to live in the rental unit and would be aware that rent was due on October 01, 2011. Consequently the landlord is entitled to a monetary award of \$2,400.00 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 of **\$600.00** 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	\$2,400.00
Less Security Deposit	(-\$600.00)
Plus filing fee	\$50.00
Total amount due to the landlords	1,850.00

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 and have failed to attend the hearing held today to dispute the Notice.

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 landlords amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,850.00**. 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 landlords 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 07, 2011.

Residential Tenancy Branch