



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent, late fees, and the filing fee, and an order to retain the security deposit in partial satisfaction of the claim.

The Landlord provided affirmed testimony that they served each tenant with a copy of the Application for Dispute Resolution, the evidence, and the Notice of Hearing. The Landlord provided the two tracking numbers for the registered mail in their testimony and indicated that their receipt states the documents were sent to each tenant at the address of the rental unit on October 13, 2011. Tenant RP attended the hearing and confirmed that each Tenant had received the package of information from the Landlord, but that Tenant CR was unable to attend the hearing today. I accept the evidence that each of the Tenants were properly served with the Application, Notice and the Landlord's evidence.

The Landlord and Tenant RP attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

Tenant RP stated that he had a file number with Residential Tenancy for a previous dispute Application he had filed against the Landlord. After discussion with the parties, I confirmed that the previous Application and file number referred to by Tenant RP was had been dismissed by a decision issued in August 2011 as neither party attended the hearing. Tenant RP confirmed that he has not since applied for further dispute resolution. I find that Tenant RP has not filed for dispute resolution in relation to the matters before me and there is no cross application from the Tenant at the time of this hearing.

The Landlord has requested to amend their Application to add unpaid rent for November 2011 in the amount of \$895.00 as the Tenants are still in the rental unit at the time of the hearing. Tenant RP confirmed that the rent for November has not been paid at this time. As a result, I grant the Landlord's request to amend their Application to include the rent for November.

The Landlord stated that they are withdrawing their request for late fees from their Application, in the amount of \$50.00 as these are not specifically included in the terms of the tenancy agreement between these parties. Accordingly the late fees are removed from the Landlord's monetary claim against the Tenants.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an order of possession, a monetary order for unpaid rent and the filing fee and an order to keep all or part of the security deposit?

Background and Evidence

The Landlord and Tenants have a tenancy agreement which commenced on January 15, 2011. The parties agree that the rent is \$895.00 per month, due on the first of the month, and that the Landlord holds a security deposit of \$447.50.

The Landlord stated that that they personally served the Tenants with the 10 Day Notice to End Tenancy for Unpaid Rent at the rental unit on September 09, 2011 the same date as the date of the Notice. Tenant RP confirmed that the date of service stated by the Landlord is correct and that they have received the Notice. The Notice to End Tenancy 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 Notice stated that the Tenants had until September 19, 2011 to move out of the rental unit. Tenant RP confirmed that they are still in the rental unit and have not moved out and that they did not file an Application to dispute this Notice within 5 days.

The Landlord stated that the Tenants owe \$3,132.50 in unpaid rent, comprised of \$447.50 outstanding for August 2011, \$1,790.00 (\$895.00 x 2 months) for September, and October 2011) and \$895.00 for November 2011. Tenant RP agreed at the hearing that they owe the Landlord \$3,132.50 in outstanding rent. Tenant RP testified that he and the other tenant have been trying to obtain the outstanding rent from Ministry of Social Development. He stated that he is also trying to get money from other family sources to resolve the outstanding rent owed. The Tenants are not able to pay the rent at this time; however, Tenant RP stated that they do not want to move out at this time.

The Landlord stated that they have been clear with the Tenants about the rent being owed and that they are seeking an order of possession and a monetary order for the outstanding rent plus the filing fee. The Landlord also confirmed that they would like to have an order to keep the security deposit plus interest to offset the amounts owed to them.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The evidence of both parties confirmed that the Tenants were properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on September 09, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was personally served to the Tenants at the rental unit, it was deemed to have been served the same day. The Notice states that the Tenants had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end from the service date. The Tenants did not pay the outstanding rent and did not apply to dispute the Notice to End Tenancy within five days from the date of service. The deadline to do so was September 14, 2011. The Landlord correctly indicated that the Tenants had until September 19, 2011 to vacate the premises, as this is 10 days from the date of service, pursuant to the provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days, the Tenants did not move out, and the Tenants did not file an Application 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 September 19, 2011, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession.

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. The Tenants agree that they owe the Landlord a total of \$3,132.50 outstanding rent for the months of August, September, October, and November 2011. I find that the Landlord has established a monetary claim of \$3,132.50.

As the Landlord has succeeded in his Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the balance of the amount owing to the Landlord to \$3,182.50.

The Landlord holds the Tenants' security deposit of \$447.50. I order that the Landlord retain the security deposit in partial satisfaction of the claim. I grant the Landlord an order under section 67 for the balance due of **\$2,735.00**.

Conclusion

I find that the Landlord is entitled to an order of possession not later than **two (2) days after service** of this order on the Tenants. This order must be served on the Tenant and may be filed in Supreme Court.

I find that the Landlord is entitled to \$3,182.50 comprised of unpaid rent and the filing fee. As I have ordered that the Landlord retain the security deposit and interest totaling \$447.50, I find that the Landlord is entitled to monetary order for the balance owing

pursuant to section 67 against the Tenants in the amount of **\$2,735.00**. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims).

The orders accompany the Landlord's copy of this decision.

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: November 03, 2011.

Residential Tenancy Branch