



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, an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing in person on October 19, 2011, the tenants did not appear. I find they have been duly served under the Act.

The landlord's agent appeared, and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

Based on the statement of landlord's agent, I find that the tenants were served with a notice to end tenancy for non-payment of rent on October 3, 2011, by personally serving the tenants. The tenants acknowledged receipt of the document by signing a proof of service document. 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 landlord's agent states that the tenants have not paid rent for October 2011, and November 2011.

The landlord's agent states he thinks the tenants left on October 31, 2011, as he saw a moving van at the rental unit on that date. The tenants did not confirm with the landlord that they were leaving and the landlord has not entered the rental unit.

Analysis

Based on the above, the statements 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, and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenants. 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 \$795.00 comprised of rent owed for October 2011, and the \$50.00 fee paid by the landlord for this application.

I find that the landlord's application for compensation for November's rent to be premature and I dismiss that with leave to reapply.

I order that the landlord retain the security deposit and interest of \$397.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$447.50.

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. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The landlord is granted an order of possession, may keep the security deposit and interest in partial satisfaction of the claim and are entitled to recover their filing fee. I grant 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: November 02, 2011.

Residential Tenancy Branch