



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, FF

Introduction

This hearing dealt was scheduled for 3:00 p.m. on this date to deal with cross applications. The landlord applied for an Order of Possession and Monetary Order for unpaid rent. The tenants applied to cancel a Notice to End Tenancy for unpaid rent.

The tenants did not appear at the hearing despite leaving the teleconference call open until 3:14 p.m. The landlord confirmed service of the tenants' application upon her. Since the landlord appeared and was prepared to deal with the tenants' application, in the absence of the tenants, I dismissed the tenants' application without leave to reapply.

The landlord testified that she served the hearing documents upon the tenants in two ways: by registered mail sent to each of the tenants on November 9, 2011 and by posting the documents on the door of the rental unit on November 10, 2011. The landlord provided registered mail receipts and tracking numbers as proof of service, as well as, a Proof of Service document signed by a witness to the posting. I was satisfied the tenants have been served with notification of the landlord's application and I proceeded to hear from the landlord without the tenants present.

On a procedural note, the parties had provided different spelling of the tenants' names on their respective application. This decision and the Orders that accompany it identify the tenants using both spellings.

The landlord also requested that the landlord's application be amended to include retention of the security deposit in partial satisfaction of the unpaid rent. I found the request does not prejudice the tenants as it reduces the Monetary Order and I have considered the request.

Issue(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession?
2. Has the landlord established an entitlement to monetary compensation for unpaid rent?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenants moved into the rental unit August 19, 2011 and paid a \$300.00 security deposit. The tenants have not paid rent since moving in. The landlord testified that rent payable for the partial month of August 2011 was \$300.00 and the tenants were to pay \$600.00 on the 1st day of every month thereafter. On October 28, 2011 the landlord posted a 10 Day Notice to End Tenancy for Unpaid rent indicating that \$1,400.00 in rent was outstanding. On November 2, 2011 the landlord posted another 10 Day Notice indicating \$600.00 was outstanding. The landlord explained that the 10 Day Notice issued November 2, 2011 reflects the rent owed for November 2011 only and is in addition to the 10 Day Notice issued previously.

With this application the landlord is seeking to recover unpaid rent of \$2,100.00 for mid-August through November 2011.

The landlord provided a copy of the 10 Day Notice issued October 28, 2011 and the tenants provided a copy of the 10 Day Notice issued November 2, 2011 as evidence for this hearing.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the tenants did not pay the outstanding rent and their application to cancel the Notice has been dismissed I find the tenancy has ended and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

I find the landlord entitled to recover unpaid rent of \$2,000.00 based upon the \$1,400.00 and \$600.00 indicated as outstanding on the 10 Day Notices. I further award the filing fee to the landlord.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed the landlord.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid rent	\$ 2,000.00
Filing fee	50.00
Less: security deposit	<u>(300.00)</u>
Monetary Order	\$ 1,750.00

The landlord must serve the Monetary Order upon the tenants and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord is authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,750.00 to serve upon the tenants.

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 29, 2011.

Residential Tenancy Branch