



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 and the filing fee.

Both parties 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)

AW the mother of the Tenants was their representative at the hearing. AW confirmed that she is not a tenant on the tenancy agreement. The Landlord made no objection to AW representing the Tenants.

The Landlord's son IK attended the hearing with the Landlord and spoke on his behalf, explaining that the Landlord had difficulty with English.

Issue(s) to be Decided

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

Background and Evidence

The Landlord and Tenants' representative agree that the Landlord served the Application and Notice of Hearing on both of the Tenants in advance of the hearing. The Tenants' representative had copies of these documents with her. The Tenants' representative stated that her daughter TW was at work and not able to attend the hearing and that her son-in-law RW was on the road for his job. The Tenants' representative stated that the Tenants had not provided her with a copy of the evidence package.

The Landlord's representative IK testified that he served the evidence package on the Tenants in advance of the hearing on December 02, 2011 at the rental unit. The Landlord stated that Tenant TW would not accept it when they tried to hand it to her, so they dropped the evidence package at her feet. The Landlord's evidence package

contained a copy of the written tenancy agreement, a copy of the NSF cheques issued by Tenants to the Landlord, and a copy of the 10 Day Notice to End Tenancy.

The Landlord provided a copy of the written tenancy agreement signed by the Tenants in evidence. The tenancy agreement states that the parties have a month to month tenancy agreement which commenced on September 17, 2011. The tenancy agreement states that rent is \$2,000.00 per month. The Landlord stated that rent is due on the 17th of each month, and that he received cheques from the Tenants for September and October, however, the cheques were NSF. The Landlord states he received no rent for November 2011 as well, and decided to issue a Notice to End the tenancy. The Landlord states that the Tenants were to pay a security deposit of \$1,000.00, however, the cheque they issued for the security deposit was also NSF. The Landlord states that he is owed \$6,000.00 rent (\$2,000.00 x 3 months) for September, October, and November. The Landlord also requested \$1,000.00 for a security deposit be paid by the Tenants.

The Landlord's representative IK states that he personally served the 10 Day Notice to End Tenancy on the Tenants on November 18, 2011 by handing it to a male adult that he believes resides at the rental unit. The Landlord's representative IK states that he had visited the rental unit on several occasions November 10, 11, 12, and 13 and saw this same male adult at the rental unit staying there with the children of the Tenants and that the Tenants were not there.

The Tenants' representative stated that the male adult that the Landlord served the documents on is her son JW, brother of Tenant TW and that he is not a tenant at the rental unit. However, the Tenants' representative confirmed that the Tenants had received the 10 Day Notice to End Tenancy, as they had spoken to her about this. The Tenant's representative stated she could not confirm or deny the details of the tenancy agreement or whether there were NSF cheques or not. The Tenants' representative stated that the Tenants are still residing in the rental unit and said she did not know whether they had paid the rent or not.

The Landlord stated that he is seeking an order of possession and a monetary order for the outstanding rent plus to receive the security deposit, and the filing fee.

Analysis

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

I accept the Landlord's evidence that the Tenants were properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on November 18, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline. The Tenants' representative also confirmed that the Tenants had received the Notice.

The Notice was personally served on an adult at the rental unit on November 18, 2011. 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 November 23, 2011. The Landlord correctly indicated that the Tenants had until November 28, 2011 to vacate the premises, based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days 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 November 28, 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 17th of the month. The Landlord provided evidence that the Tenants provided him NSF rent cheques for September, October 2011, and that no payment was received for rent for November 2011 rent. I find that the Landlord has established a monetary claim of \$6,000.00.

I find that the Tenants provided the Landlord an NSF cheque for \$1,000.00 for the security deposit, however, as I have granted the Landlord an order of possession the Landlord is not entitled to receive a security deposit as the tenancy is ending.

As the Landlord has succeeded in his Application, I find that the Landlord is entitled to recover the \$100.00 fee for this proceeding. This brings the balance of the amount owing to the Landlord to \$6,100.00.

I grant the Landlord an order under section 67 for **\$6,100.00**

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 Tenants and may be filed in Supreme Court.

I deny the Landlord's request for the Tenants to pay a \$1000.00 security deposit, as the tenancy is ending.

I find that the Landlord is entitled to \$6,100.00 comprised of unpaid rent and the filing fee. I find that the Landlord is entitled to monetary order pursuant to section 67 against the Tenants in the amount of **\$6,100.00**. 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: December 12, 2011.

Residential Tenancy Branch