



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 was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; and to recover the filing fee from the tenants for the cost of this application. At the outset of the hearing the landlord's agent withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

One of the tenants and landlords agent attended the conference call hearing, gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issues(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 month to month tenancy started on May 15, 2011. Rent for this unit is \$525.00 per month and is due on the 15th day of each month. The tenants paid a security deposit of \$262.50 and a pet deposit of \$262.50 on May 10, 2011.

The landlords' agent testifies that the tenants failed to pay rent for October, 2011. The tenants had issued a cheque for this month rent but the cheque was dishonoured at the bank. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on November 03, 2011, 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 \$525.00 due on October 15, 2011. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on November 13, 2011. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants also failed to pay rent for November and December, 2011. The total amount of outstanding rent is now \$1,575.00.

The landlord has applied to retain the tenants' security and pet deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession effective in two days.

The tenant does not dispute that they owe rent arrears for October, November and December and agrees they did not apply to cancel the 120 Day Notice. The tenant testifies that they did try to give the landlord some rent but the landlord refused to accept it.

The landlord's agent testifies that the landlord would no longer accept cheques from the tenants as the rent cheque for October was dishonoured because the account the cheques are drawn on has been closed.

Analysis

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, I find that the landlord is entitled to recover rent arrears for October, November and December, 2011 to the sum of **\$1,575.00** and will receive a monetary award for 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 and pet deposit of **\$525.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, they are 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	\$1,575.00
Less Security and pet deposits	(-\$525.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$1,100.00

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 nor apply to dispute the Notice to End Tenancy within five days.

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 landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,100.00**. 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: December 09, 2011.

Residential Tenancy Branch