



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 deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the landlord withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations for tenancy agreement

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on December 09, 2011. Mail receipt numbers were provided by the landlord for each of the tenants. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord was permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the landlord has been reviewed and are considered in this decision. There was no

appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

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 tenancy started on June 22, 2008. This was a fixed term tenancy which expired on December 31, 2008 and reverted to a month to month tenancy after that date. Rent for this unit is \$1,300.00 per month and is due on the first of each month. The tenants paid a security deposit of \$675.00 on June 24, 2008. The landlord testifies that the tenants owe rent for a period prior to April, 2011 however as the sum owed has now escalated to more than \$10,000.00 the landlord has reduced their claim to recover rent from April, 2011 only.

The landlord's agent testifies that for some of the months the tenants were getting their rent paid from the welfare department and they also received a rent payment from a housing society. The landlord's agent states that the tenants' welfare payments would on occasion be sent directly to the landlord but other months the tenants would pay themselves.

The landlord's agent testifies the tenant owe \$4,720.00 for April, May, June and July. The landlords received a welfare cheque for August and September, 2011 of \$913.06 and a housing society payment of \$120.00 for each month. This left an unpaid balance of \$266.94 for August and September, 2011.

The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on September 02, 2011. This was handed to the tenants in person. This Notice stated that the tenants owed rent of \$10,135.48. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on September 12, 2011. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants failed to pay all the rent for October, November and December 2011. The landlord's agent testifies the landlord received a welfare cheque of \$900.00 and a housing society payment of \$120.00 for October, 2011 which left an unpaid balance of \$280.00. The landlords agent testifies they did not receive a welfare payment for November or December, 2011 but did receive \$120.00 for November and December, 2011 from the housing society. This leaves an unpaid balance for November and December of \$1,180.00 for each month. The total amount of unpaid rent is now \$7,893.88. The landlord's agent testifies that when payments were received from any source after the 10 day Notice was served upon the tenants the landlord gave the tenants a receipt marked for use and occupancy only. The landlord's agent states they did not file their application for this hearing until December, 2011 as the tenants have always been able to secure a welfare payment to settle the rent arrears. This time the tenants have failed to do so and the landlord now seeks an Order of Possession and a Monetary Order to recover the unpaid rent.

The landlords agent has extended the effective date of the Notice and seeks an Order of Possession to take effect on December 28, 2011.

The landlord seeks to apply the tenants' security deposit and any accrued interest against the unpaid rent and seek to recover their \$50.00 filing fee.

Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I refer the tenants to s. 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.

I find therefore that the rent is the tenants responsibility and find the landlord is entitled to recover rent arrears for April, May, June, July, August, September, October, November and December, 2011 to the sum of **\$7,893.88**. The landlord will receive a Monetary Order 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 deposit of **\$675.00** plus accrued interest of **\$5.28** 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	\$7,893.88
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$680.28)
Total amount due to the landlord	\$7,263.60

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 **\$7,263.60**. 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 **December 28, 2011**. 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 21, 2011.

Residential Tenancy Branch