



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPB MND MNR FF

Preliminary Issues

The Landlord confirmed the Tenants are still occupying the unit and she wishes to withdraw her request for an Order of Possession for breach and a Monetary Order for damages as she wants to proceed with her request for an Order of Possession for unpaid rent and a monetary order for unpaid rent and utilities.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and utilities, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the Tenants, was done via registered mail November 22, 2011. Mail receipt numbers were provided in the Landlord's testimony. The Landlord also had both Tenants sign a document on November 25, 2011 confirming they received both sets of hearing documents. Based on the submission of the Landlord I accept that each Tenant has been served notice of this proceeding.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenants despite them being served notice of this hearing.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?

2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach, pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord affirmed that they entered into a written month to month tenancy agreement that began on October 1, 2010. Rent is payable on the first of each month in the amount of \$850.00 plus 50% of the utilities and during the first week of October 2010 the Tenants paid \$425.00 as the security deposit.

The Landlord advised the Tenants have been paying rent in several small payments and as of November 9, 2011 they had failed to pay rent for November 2011 and had an accumulated unpaid balance due of \$1,850.00. She advised they were in arrears for utilities for an estimated amount of \$2,295.25. She wishes to obtain an Order of Possession for as soon as possible.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

Order of Possession - I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenants failed to pay the rent within 5 days after receiving this notice, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for the total unpaid rent of \$1,850.00 up to November 2011; pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due.

Based on the aforementioned I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore I award the Landlord **\$1,850.00** for unpaid rent.

Claim for unpaid utilities – The Landlord claims for unpaid utilities based on an estimated amount and without providing copies of the actual utility bills. Therefore I find there to be insufficient evidence to support her claim and I hereby dismiss her request for \$2,295.25 in unpaid utilities.

The Landlord has partially succeeded with her application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served upon the Tenants.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,900.00** (\$1,850.00 + 50.00). This Order is legally binding and must be served 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: December 08, 2011.

Residential Tenancy Branch