



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 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 or utilities, to keep all or part of pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

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 Tenant affirmed they only received one envelope with copies of the Landlord's application for dispute resolution, the hearing documents, and the Landlord's evidence.

The Landlord affirmed that she sent only one envelope via registered mail addressed to the male Tenant.

The parties agreed they entered into a tenancy agreement that began on November 1, 2011 however the Tenants were allowed to move into the unit on approximately October 29, 2011. Rent is payable on the first of each month in the amount of \$900.00 and the Tenants paid cash towards the security deposit of \$200.00 on October 28 and \$250.00 on October 29, 2011 for a total of \$450.00.

The Landlord advised the Tenants gave her \$225.00 cash on November 1, 2011 towards rent and a post dated cheque of \$675.00 to pay the balance of rent. She stated that when she attempted to cash the post dated cheque she was advised the check was a bad cheque. She went back on November 28, 2011 to ask why the check was bad and requested the teller stamp it for her evidence. She was told the account had been closed. She confirmed the Tenants have failed to pay any more rent for November and have not paid anything for December 2011. She served the male Tenant in person with the 10 Day Notice to End Tenancy on November 21, 2011 at 3:00 p.m., in the presence of a witness, as supported by the proof of service document that she provided in her evidence.

The Tenant testified that they were served a letter on November 3, 2011, under their door, from the Landlord which he read into evidence. This letter informed the Tenants that the Landlord was not allowed to rent her unit under the Strata by-laws therefore they were required to vacate the unit in 14 days. On November 5, 2011 the Tenants received another letter from the Landlord informing them that the Landlord must move back into the unit so they called the Residential Tenancy Branch and found out that they did not recognize this type of eviction so they put a stop payment on their November 4, 2011 cheque. They argued that they sent the Landlord an e-mail telling her they wanted to meet with her to pay their rent but she refused to respond and has refused to take their payment.

The Tenants confirm receiving the 10 Day Notice however they state it was posted to their door, as noted on the Notice, and they did not receive it until November 23, 2011.

The Landlord advised she had completed the form prior to arriving at the unit as she was expecting to have to post the notice or put it in their mail slot, however when she knocked on the door the male Tenant answered so she served him in person with the notice.

The Landlord confirmed she served the Tenants with the November 3rd and November 5th, 2011 letters as she was informed by the Strata that her unit was not rentable. When she delivered the November 5th 2011 letter she had both Tenants sign it where it was written that they both "read and understand the reasons for terminating the contract".

The Landlord confirmed she received e-mails from the Tenants one dated November 15, 2011 and the other dated November 18, 2011 which she read into evidence. Neither e-mail mentioned an offer to pay rent or meet to pay rent.

The Tenant stated that he agreed to meet with the Landlord on November 5, 2011, which is when they signed her second notice and that he attempted to give the Landlord cash for rent at that time. He then stated that they attempted to have the Landlord sign a form from disability from the Province, which was not an “intent to rent form” but was for a supplement for shelter. He argued the Landlord refused to sign this form when he presented it on November 5, 2011.

Analysis

Section 89(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been served with the Notice of Dispute Resolution documents, the male Tenant who received the documents. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the male Tenant who has been properly served with Notice of this Proceeding. As the second Tenant has not been properly served the Application for Dispute Resolution as required, the monetary claim against the female Tenant is dismissed without leave to reapply.

Section 88 of the *Residential Tenancy Act* stipulates how a notice to end tenancy must be served. In this case I accept the male Tenant was personally served with the 10 Day Notice on November 21, 2011. As the two Tenants reside together I find service of the 10 Day Notice to be completed in accordance with the Act.

After careful consideration of the aforementioned testimony and the evidence submitted by the Landlord, I make the following findings based on a balance of probabilities: Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove rent remains unpaid since issuing the 10 Day Notice. The evidence supports that rent remains unpaid however the Tenants allege the Landlord refused payment of rent. The only evidence provided by the Tenants in support of this allegation was verbal testimony and I find the disputed verbal testimony insufficient to meet their burden of proof. However the Landlord’s evidence included copies of a post dated cheque that was declined by the bank which proves the Landlord attempted to collect the payment of rent on or before November 28, 2011.

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 failed to make application to dispute it, 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.

The Landlord claims for the total unpaid rent of \$1,575.00 which consist of \$675.00 owed for November 2011 plus \$900.00 owed for December 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 **\$675.00** for unpaid rent for November 2011.

The parties agreed the Landlord served the Tenants with a letter to end their tenancy so the Landlord could move back into the unit, which is governed under section 49 of the *Act*, notices for landlord's use of the property.

Section 51 of the *Act* provides that any tenant, who is served notice under section 49 of the *Act*, is entitled to receive compensation from the landlord on or before the effective date of the notice in an amount equal to one month's rent.

Therefore, I find December 1, 2011 rent deemed to be paid to the Landlord, as the one month's compensation for the Tenants' receiving Notice under section 49, in accordance with Section 51 (1.1) of the *Act*.

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

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid rent for November 2011	\$ 675.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 725.00
LESS: Security Deposit \$450.00 + Interest 0.00	<u>-450.00</u>
Offset amount due to the Landlord	<u>\$ 275.00</u>

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 **\$275.00**. 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 14, 2011.

Residential Tenancy Branch