



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, 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; an Order of Possession for cause; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security 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 states that the tenants have not been served with a One Month Notice to End Tenancy for cause and they withdraw their application for an Order of Possession for cause.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. 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 parties has been reviewed and are considered in this decision.

Issue(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 August 15, 2011. This is a fixed term tenancy which was due to expire on August 15, 2012. Rent for this unit is \$1,300.00 per month and is due on the first of each month. The tenant paid a security deposit of \$650.00 on July 31, 2011.

The landlord testifies that the tenants owe rent of \$200.00 for November, 2011 and their rent cheque for December was returned by the bank as it was dishonoured. (Copy of cheque provided in evidence). The landlord testifies that the tenants were served a 10 Day Notice to End Tenancy for unpaid rent on December 02, 2011. This was posted to the tenants' door and was deemed to have been served three days after posting. This Notice states that the tenants owe rent for December of \$1,300.00. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 10, 2011. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants have failed to pay rent for January, 2012. The landlord states the tenants have provided post dated cheques but as the tenants would not return the landlords calls, e-mails or answer their door to the landlords the landlords were reluctant to put January's cheque into the bank in case it was also dishonoured to avoid any further bank charges. The landlord has requested to amend the application to include the unpaid rent for November and for January as the tenants continues to reside in the unit. The total amount of unpaid rent is now \$2,800.00.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

The tenants do not dispute that they owe rent of \$200.00 for November, 2011. The tenants testify that they did not know the Decembers rent cheque had not cleared at the bank. The tenants state the rent cheque for January would have been cleared had the

landlord put it in the bank as the tenants income assistance had come through by this time.

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.*

I find that the landlord has established their claim for unpaid rent for November and December, 2011 to the sum of \$1,500.00. I will allow the landlord to amend their application to include unpaid rent for January 2012 as the tenants continue to live in the rental unit and would be aware that rent is due on the first day of each month. I accept that the landlord was attempting to avoid bank charges by not putting the cheque for Januarys rent into the bank as the previous cheque had not cleared and the tenants did not communicate with the landlord despite many attempts to contact them. Consequently the landlord is entitled to recover unpaid rent to the total sum of **\$2,800.00** 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 **\$650.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, they are 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	\$2,800.00
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Less Security Deposit	(-\$650.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$2,200.00

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. The notice is deemed to have been received by the tenant on December 05, 2011 and the effective date of the notice is amended to December 15, 2011 pursuant to section 53 of the *Act*. I grant the landlord an order of possession pursuant to s. 55 of the *Act*.

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 **\$2,200.00**. 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 Respondents. 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: January 13, 2012.

Residential Tenancy Branch