



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

Based on the testimony of landlord's agent, I find that the tenants were served with a notice to end tenancy for non-payment of rent on January 25, 2012, by posting the document to the door of the residence. The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The parties agree that the tenants have not paid rent for January 2012 and February 2012 and that the tenants did not dispute the notice.

The landlord's agent testified that he believes the tenants are still in the rental unit, as there has been no communication from the tenants and the tenants have not returned the keys to the rental unit. The landlord is requesting an order of possession.

The female tenant testified that an order of possession is not required as they left the rental unit on February 1, 2012. The tenant states she has in her possession the landlords keys.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

As the tenants have not returned the keys to the landlord and the landlord has not verified the tenants have left the rental unit, I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of \$2,250.00 comprised of rent owed and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of \$275.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,975.00.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: February 27, 2012.

Residential Tenancy Branch