



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call to hear the application made by the landlords for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of this application.

An agent for the landlords attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. However, despite each of the tenants being served individually by registered mail with the Landlord Application for Dispute Resolution and notice of hearing documents, none of the tenants attended the hearing. The landlords have provided evidence of having sent the documents by registered mail. All evidence and testimony provided have been reviewed and are considered in this Decision.

At the outset of the hearing, the landlord's agent applied to amend the Landlord Application for Dispute Resolution to change the spelling of the surname of one of the tenants, indicating that the spelling on the application was an inadvertent error. I find that the tenants would not be prejudiced by the amendment, the amendment is allowed, and the style of cause has been amended accordingly.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Are the landlords entitled to a monetary order for unpaid rent or utilities?
- Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlords' agent testified that this month-to-month tenancy began on December 1, 2011 and the tenants still reside in the rental unit. Rent in the amount of \$2,000.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,000.00 and no pet damage deposit was collected.

The landlords' agent further testified that the tenants failed to pay any rent when it was due for the month of January, 2012. The landlord caused the tenants to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided for this hearing. The notice is dated January 7, 2012 and states that the tenants failed to pay rent in the amount of \$2,000.00 that was due on January 1, 2012, and contains an expected date of vacancy of January 17, 2012. The landlords' agent testified that although the form has a checkmark in the box indicating that the notice was served by posting it to the door of the rental unit, the tenants were actually served by handing it directly to one of the tenants, and the checkmark in the box is an inadvertent error. Both pages of the 2-page form have been provided, and the landlords' agent testified that both pages were provided to the tenants. The notice also contains all three tenants' names.

The landlords' agent testified that no notice of dispute resolution has been served on the landlords, and that to the best of the agent's knowledge, the tenants have not disputed the notice.

The tenants have further failed to pay any rent for the month of February, 2012.

The landlords request an Order of Possession, a monetary order in the amount of \$4,000.00, an order permitting the landlord to keep the security deposit in partial satisfaction of the claim, and recovery of the \$50.00 filing fee for the cost of this application.

Analysis

Firstly, with respect to the landlords' application for an Order of Possession, the *Residential Tenancy Act* states that a tenant must pay rent when it is due, and if the tenant fails to do so, the landlord may serve the tenant with a notice to end the tenancy. The tenant has 5 days from the date of service, or deemed service, to pay the rent in full, in which case the notice is of no effect. If the tenant fails to pay the rent in full or apply for dispute resolution to dispute the notice within that 5 day period, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of

the notice. In this case, and in the absence of any evidence or testimony to the contrary, I accept the testimony of the landlord's agent that the tenants were served by personally handing the notice to one of the tenants on January 7, 2012. The tenants did not pay the rent in full within 5 days and have not disputed the notice, and I therefore find that the landlord is entitled to an Order of Possession.

With respect to the monetary order, I accept the testimony of the landlords' agent, and I find that the tenants are in arrears the sum of \$4,000.00 for January and February's rent. I further find that the landlords have established a claim for the unpaid rent and are entitled to keep the security deposit in partial satisfaction of the claim.

Since the landlords have been successful with the claim before me, the landlords are also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenants.

I further order the landlords to keep the security deposit in partial satisfaction of the claim, and I grant a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in favour of the landlords as against the tenants, jointly and severally, in the amount of \$3,050.00.

This order is final and binding on the parties and may be enforced.

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 14, 2012.

Residential Tenancy Branch