



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Preliminary Issues

After reviewing the Landlord's application for dispute resolution, at the onset of the hearing, the Landlord confirmed he wished to amend his application to correct the spelling of the male Tenant's surname.

The Landlord indicated he had made a clerical error when writing the male Tenant's surname on his application for dispute resolution and requested that it be corrected to include the "g". Based on the submission of the Landlord, I accept that this was a clerical error and allowed the amended pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep the security deposit in partial satisfaction of their claim, and to recover the cost of the filing fee from the Tenants.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on January 20, 2012. The Canada Post tracking numbers were provided in the Landlord's testimony. Based on the submission of the Landlord I find each Tenant was sufficiently served notice of this proceeding in accordance with the *Act*.

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. The Tenants did not appear despite being served notice of the hearing in accordance with the Act.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, Regulation and/or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord affirmed he entered into a month to month tenancy agreement with the Tenants that began on October 1, 2011. Rent is payable on the first of each month in the amount of \$950.00 and on October 1, 2011 the Tenants paid \$475.00 as the security deposit.

The Landlord advised that when the Tenants failed to pay the January 1, 2012 rent a 10 Day Notice to End Tenancy was issued and posted to their door on January 3, 2012. The Tenants remain in the rental unit and have not paid anything towards the January or February 2012 rents.

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.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

Order of Possession – I have reviewed all documentary evidence, which included among other things a copy of the 10 Day Notice, and accept that the Tenants have been served with a 10 Day Notice to end tenancy as declared by the Landlord. The notice is deemed to have been received by the Tenants on January 6, 2012, three days after it was posted to the door, and the effective date of the notice is January 16, 2012, pursuant to section 90 of the *Act*.

I accept the evidence before me that the Tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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 and I hereby grant the Landlord an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$1,900.00 which is comprised of unpaid rent of \$950.00 for January 1, 2012, plus \$950.00 for February 1, 2012, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. 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.

Based on the aforementioned I find the Landlord has met the burden of proof and I award him a monetary claim of **\$1,900.00** for unpaid rent.

Filing Fee - The Landlord has succeeded with his application and 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	\$1,900.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,950.00
LESS: Security Deposit \$475.00 + Interest 0.00	<u>-475.00</u>
Offset amount due to the Landlord	<u>\$1,475.00</u>

Conclusion

I HEREBY FIND that 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.

The Landlord's decision will be accompanied by a Monetary Order for **\$1,475.00**. 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: February 06, 2012.

Residential Tenancy Branch