



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants and the landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitles to an order of possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

Both parties agree that this tenancy started on August 01, 2010. This was a verbal agreement between the parties for the tenants to rent this unit for a monthly rent of \$1,050.00. Rent is due on the 1st day of each month.

The landlord testifies that the tenants failed to pay rent for February, 2012. The landlord states that the tenants were served with a 10 Day Notice to End Tenancy on February

05, 2012 in person. This notice notifies the tenants that they have five days to either pay the outstanding rent or apply for Dispute Resolution to cancel the Notice or move from the rental unit on the effective date of the Notice which was February 15, 2012.

The landlord testifies that the tenants failed to pay rent and did not vacate the rental unit by February 15, 2012. Since that time the landlord testifies that the tenants have also failed to pay rent for March, 2012. The landlord seeks a Monetary Order to recover unpaid rent and an Order of Possession to take effect as soon as possible.

The tenant attending does not dispute that they did not pay rent for February, 2012. The tenant testifies that he has moved most of their belongings out of the house at the beginning of March but agrees they have not returned the keys to the landlord or removed a lamp and a trailer. The tenant states he told the landlord that the landlord could keep the tenants security deposit to pay the rent. The tenant disputes that he owes rent for March, 2012.

The landlord argues that he went to the rental unit a few days ago and looked through the windows. The landlord states there were still boxes and some furniture in the unit and the tenants' trailer remains in the yard.

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.

The landlord has provided a copy of the 10 Day Notice to End Tenancy in evidence which shows the tenants failed to pay rent for February, 2012. The tenant does not dispute this; therefore I find the landlord is entitled to recover unpaid rent for February, 2012 to the sum of **\$1,050.00**. The tenant argues that they are not responsible for rent

for March as they have moved most of their belongings out of the rental unit at the beginning of March. The landlord argues that this is not the case and up to a few days ago there were boxes, furniture and a trailer remaining at the property.

I find I prefer the landlord's evidence as the tenant attending has agreed they have not yet returned the keys to the rental unit and has stated there are a lamp and a trailer still at the property. Consequently, it is my decision that the tenants have not yet fully vacated the rental unit and are responsible for rent for March, 2012 to the sum of **\$1,050.00**.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding from the tenants pursuant to s. 72(1) of the *Act*.

The landlords will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the amount owing of **\$2,150.00**.

I have reviewed all documentary evidence and accept that the tenants have been served with a Notice to end Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The notice is deemed to have been received by the tenants on February 05, 2012. 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 and grant the landlord an order of possession pursuant to section 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 **\$2,150.00**. 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 tenants. 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: March 09, 2012.

Residential Tenancy Branch