



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.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on March 06, 2012. Mail receipt numbers were provided by the landlord by sworn testimony. The landlord confirmed that one tenant collected the registered mail package however the other tenant has not. The tenants are deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and Legal Council for the landlord appeared at the hearing. The landlord gave sworn testimony and was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

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 to recover unpaid rent?

Background and Evidence

This tenancy started on November 01, 2011. This was a fixed term tenancy which is due to expire on November 01, 2012. Rent for this unit is \$1,650.00 per month and is due on the first day of each month in advance.

Council for the landlord states that the tenants failed to pay rent for February, 2012 of \$1,650.00. The landlord issued a 10 Day Notice to the tenants on February 24, 2012 by registered mail and has provided copies of the registered mail tracking information in evidence. This Notice states the tenants owe rent for February, 2012 and informs the tenants that they have five days to either pay the rent or dispute the Notice or the tenancy will end on March 05, 2012.

Council for the landlord states the tenants have not paid the outstanding rent and have also failed to pay rent for March, 2012. Council for the landlord states there is a clause in the tenancy agreement which informs the tenants that a late fee of 12 percent will be charged for any month that rent is late or unpaid. The landlord seeks to recover the late fees of \$11.93 for February and March, 2012.

The landlord seeks an Order of Possession to take effect as soon as possible and a Monetary Order to recover the unpaid rent, late fees and the \$50.00 filing fee.

Analysis

I have reviewed the landlord's documentary evidence and find only one of the Respondents named on the landlords application is named as a tenant on the tenancy agreement and this tenant is the only tenant who has signed the tenancy agreement. Therefore any Orders issued have named this tenant only.

I refer the Parties to section 26 of the *Act which* 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 established that rent is due on the first day of each month and has established that the tenant has failed to pay rent for February and March, 2012. Consequently, I find that the landlord is entitled to recover rent arrears of **\$3,300.00** pursuant to s. 67 of the *Act* from the tenant named on the tenancy agreement.

The landlord also seeks to recover $\$11.93 \times 2 = \23.86 in late fees for February and March, 2012. The landlord has provided a copy of the tenancy agreement which includes a clause concerning the late fees. Consequently, I find the tenant named on the tenancy agreement was aware that late fees would be applied if the tenant failed to pay rent on the day it was due and therefore find the landlord has established their claim to recover the sum of **\$23.86** from this named tenant pursuant to s. 67 of the *Act*.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was sent by registered mail it was deemed served five days later on February 29, 2012. Therefore, I have amended the effective date of the Notice to March 10, 2012 pursuant to s. 53 of the *Act*. The tenant 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 tenant who is named on the tenancy agreement is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the amended effective date of the Notice and grant the landlord an Order of Possession pursuant to section 55 of the *Act*.

As the landlord has been successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$3,300.00
Late fees	\$23.86
Filing fee	\$50.00
Total amount due to the landlord	\$3,373.86

Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$3,373.86**. The order must be served on the Respondent who is the named tenant on the tenancy agreement and this Order is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the Respondent who is the named tenant on the tenancy agreement. This order must be served on that Respondent 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 22, 2012.

Residential Tenancy Branch