



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, loss of rent, and utilities. The tenants did not appear at the hearing. The landlord testified that hearing packages were sent to the tenants at the rental unit address on April 18, 2012 and the tenants were still residing at the rental unit. The landlord provided two registered mail tracking numbers as proof of service and testified the mail was not returned. I was satisfied the tenants were sufficiently served with notice of this hearing and I proceeded to hear from the landlord without the tenants present.

On a procedural note, the landlord requested the monetary claim be amended to include loss of rent for May 2012, a subsequent hydro bill received by the landlord, and additional payments made by the tenants. The landlord testified that the amended claim is reflected on the ledger that the tenants have been provided. I agreed to consider the amendment and requested the landlord fax me a copy of the ledger account during the hearing. The landlord provided me with a copy of the tenants' ledger during the hearing and I have considered it in making this decision.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent and utilities?
2. Is the landlord entitled to a Monetary Order for unpaid rent, loss of rent and utilities?

Background and Evidence

The tenancy commenced December 1, 2011 and the tenants are required to pay rent of \$1,700.00 per month. The tenants are also required to pay the landlord for hydro bills less an abatement of \$50.00 per month to reflect a basement suite on the property. The tenancy agreement provides a clause for late and NSF cheques in the amount of \$25.00 each.

The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) on the tenants' door on April 5, 2012 in the presence of a witness. The Notice indicates the tenants owed rent of \$2,330.00 in rent as of April 1, 2012 and failed to pay \$641.97 in utilities that was demanded in writing on February 27, 2012. The tenants did not dispute the Notice but made payments of \$1,050.00 and \$1,200.00 on April 10, 2012 and April 11, 2012 respectively. As the tenants did not pay the full amount of outstanding rent and continued to reside at the rental unit and the landlord applied for an Order of Possession.

Since this application was filed the landlord submitted that it has incurred a loss of rent for May 2012 and another hydro bill of \$520.96 has been received. The landlord has credited the tenants' ledger account for the \$50.00 monthly rent abatement and the \$1,200.00 and \$500.00 payments received from the tenants on May 2, 2012 and May 3, 2012 respectively. The current outstanding balance, including a late fee of \$25.00 charged for April 2012, is \$1,167.93. The landlord is seeking to recover that amount from the tenants, plus the filing fee paid for this application.

Documentary evidence received and considered in making this decision include copies of: the tenancy agreement; the 10 Day Notice; a signed Proof of Service of the 10 Day Notice; and, the tenants' ledger account.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

The Notice provided to me for this hearing does not state an effective date. Pursuant to section 53 of the Act, a stated effective date that does not comply with the Act is automatically changed to comply. Accordingly, the effective date is changed to read April 18, 2012.

Since the tenants did not pay the full amount of the outstanding rent or dispute the Notice I find the tenancy ended on April 18, 2012 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

Upon review of the ledger I was able to reconcile it to the amounts appearing on the 10 Day Notice. I am also satisfied the ledger is accurate, and to be compliant with the provisions of the tenancy agreement and the Act. Therefore, I grant the landlord's request to recover the outstanding balance of \$1,167.93 in unpaid rent, utilities, loss of rent and a late fee. I also award the \$50.00 filing fee to the landlord. The landlord is provided a Monetary Order in the total amount of \$1,217.93 to serve upon the tenants. The Monetary Order may be enforced in Provincial Court (Small Claims) as an Order of that court.

As the landlord did not request retention of the security deposit and/or pet deposit with this application any deposits continue to remain in trust, to be administered in accordance with the Act.

Conclusion

The tenancy has ended for unpaid rent and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has also been provided a Monetary Order in the amount of \$1,217.93 to serve 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: May 08, 2012.

Residential Tenancy Branch