



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to give evidence. 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 entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This month to month tenancy started on January 01, 2012. Rent for this unit is \$1,350.00 per month. Rent is due on the first day of each month. The tenants paid a security deposit of \$675.00 on December 27, 2011.

The landlords' agent testifies that the tenants failed to pay rent for April, 2012 of \$1,350.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on April 11, 2012. This was served in person to the tenants. This Notice states that the tenants owe rent of \$1350.00. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on April 21, 2012. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has also failed to pay rent for May, 2012. The total amount of outstanding rent is now \$2,700.00.

The landlord has applied to retain the tenants' security deposit of \$675.00 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

The tenant attending does not dispute that they have failed to pay rent for April and May, 2012. The tenant testifies that they were withholding rent because the landlord had not made some repairs to the unit.

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.

Consequently I am satisfied with the undisputed evidence before me that the tenants have failed to pay rent for April and May, 2012 and the landlord is entitled to recover rent arrears to the sum of **\$2,700.00** pursuant to s.67 of the Act.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$675.00** in partial payment of the rent arrears.

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

The landlords will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$2,700.00
Less Security Deposit	(-\$675.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$2,075.00

I have reviewed all documentary evidence and accept that the tenants have been served with 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 April 11, 2012. The Notice states that the tenants have 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 **\$2,075.00**. 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: May 17, 2012.

Residential Tenancy Branch