



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – CNR, MNSD, FF

For the landlords – OPR, MNR, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for dispute resolution. The tenant has applied to cancel the Notice to End Tenancy for unpaid rent; for a Monetary Order to recover the security and pet deposits and to recover the filing fee from the landlord for the cost of this application. The landlords have applied for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security and pet deposits; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on May 04, 2012. Mail receipt numbers were provided in the landlord's documentary evidence and the landlord testifies that the tracking information shows the tenants collected the registered mail on May 09, 2012. 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 hearing was scheduled to take place on May 16, 2012 at 11.00 a.m. The landlords appeared at that hearing but the tenants failed to appear. The hearing was rescheduled for today and the landlord and tenant were contacted to provide the parties with new hearing details. A message was left for the female tenant to call to receive details of the rescheduled hearing; however, the female tenant did not contact the Residential

Tenancy Office. No contact was made for the male tenant as his telephone number provided was not in service. The hearing went ahead as scheduled and the phone line remained open for 10 minutes however the tenants did not dial into the conference call during this time. Therefore, the tenant who applied has failed to present the merits of their application and the application is dismissed.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent and utilities?
- Is the landlord entitled to a monetary Order to recover unpaid rent and utilities?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This month to month tenancy started on October 16, 2011. Rent for this unit is \$1,300.00 per month. Rent is due on the first day of each month. The tenants paid a security deposit of \$650.00 and a pet deposit of \$500.00 on October 15, 2011.

The landlords' testifies that the tenants failed to pay rent for April, 2012 of \$1,300.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on April 19, 2012. This was served in person to the tenants. This Notice states that the tenants owe rent of \$1300.00. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on April 30, 2012. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants have also failed to pay rent for May, 2012. The total amount of outstanding rent is now

\$2,600.00 and the landlords seek to amend their application to include the unpaid rent for May, 2012.

The landlords' testify that the tenants had the utilities in the female tenant's name. However the landlords have obtained an outstanding bill from the District because the tenants have been in arrears with the utility bills and now owe the district the sum of \$587.63. The landlords testify that the tenants were sent a disconnection notice from the District on April 30, 2012 and as the tenants still failed to pay the utility arrears the District have disconnected the utilities on or about May 01, 2012. The landlords testify that this utility bill will now be added to their taxes for 2012 and they seek to recover this amount from the tenants in order to pay this utility bill and get the power turned back on to the unit.

The landlord has applied to retain the tenants' security and pet deposits of \$1,150.00 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

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 **\$2,600.00** pursuant to s.67 of the Act.

I further Order the tenants to pay the sum of **\$587.63** for the unpaid utilities to the landlords. This sum must be used by the landlords to settle the tenants' unpaid utility account.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security and pet deposits of **\$1,150.00** in partial payment of the rent arrears.

As the landlords have been successful in this matter, the landlords are 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	\$2,600.00
Outstanding utilities	\$587.63
Less Security Deposit	(-\$1,150.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$2,087.63

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 19, 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 however the female tenant did dispute the Notice on the fifth allowable day but has failed to attend the hearing and the tenant's application has been dismissed.

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 **\$2,087.63**. 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.

The tenant's application is dismissed in its entirety without leave to reapply.

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