



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep all or part of pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on May 30, 2012. Mail receipt numbers were provided in the Landlord's evidence. Based on the submissions of the Landlord I find that each Tenant was sufficiently served notice of this proceeding.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord advised that the Tenants entered into a fixed term tenancy agreement that began on January 1, 2012 and is not set to expire until December 31, 2012. Rent is payable on the first of each month in the amount of \$828.00 and on December 29, 2011 the Tenants paid a security deposit of \$414.00.

The Landlord affirmed that when the Tenants failed to pay their May 1, 2012 rent a 10 Day Notice to end tenancy was posted to their door on May 3, 2012 for the May 2012 rent of \$828.00. A payment was received May 4, 2012 in the amount of \$500.00 and a receipt was issued to the Tenants for use and occupancy only.

The Landlord submitted that the Tenants still have possession of the unit and that no rent has been paid for June 2012. They are seeking to recover the lost rent for June 2012, the unpaid balance due for May 2012 of \$328.00, and to obtain an Order of Possession for as soon as possible.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

Order of Possession - I find that the Landlords have met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, and that the Tenants are deemed to have received the 10 Day Notice on May 6, 2012, three days after it was posted to their door. The Tenants failed to pay the rent within 5 days after receiving this notice, therefore, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, May 16, 2012, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$328.00 for May 2012. Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the aforementioned, I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the Landlord has met the burden of proof and I award them a monetary claim of **\$328.00** for May 2012 unpaid rent.

Loss of rent – As noted above this tenancy ended May 16, 2012, in accordance with the 10 Day Notice, therefore I find the Landlord is seeking loss of rent for June 2012 given that the Tenants have failed to pay June 1, 2012 rent and still have possession of the unit. The Landlord will not regain possession of the unit until after service of the Order of Possession and will therefore lose rent for June 2012.

Based on the aforementioned I find that the Landlord has succeeded in proving their loss, as listed above, and I approve their claim for **\$828.00** for loss of June 2012 rent.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid rent for May 2012	\$ 328.00
Loss of rent for June 2012	828.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,206.00
LESS: Security Deposit \$414.00 + Interest 0.00	<u>-414.00</u>
Offset amount due to the Landlord	<u>\$ 792.00</u>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served upon the Tenants.

The Landlord has been awarded a Monetary Order for **\$792.00**. This Order is legally binding and must be served 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: June 25, 2012.

Residential Tenancy Branch