



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, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit, 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 June 8, 2012. Mail receipt numbers were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenants were sufficiently served notice of this proceeding, in accordance with the Act.

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 affirmed that the Tenants entered into a six month tenancy agreement that began on March 1, 2012, as supported by the tenancy agreement submitted in their evidence. Rent is payable on the first of each month in the amount of \$1,100.00 and on February 20, 2012 the Tenants paid \$550.00 as the security deposit.

The Landlord submitted a copy of a 10 Day Notice to End Tenancy into evidence and advised this was posted to the Tenants' door on May 5, 2012 demanding the \$740.00 that remained unpaid for May 1, 2012 rent. Then on May 30, 2012 a cheque for \$550.00 was received from Income Assistance leaving a balance owing of \$165.00. The Landlord stated the Tenants are still occupying the rental unit and have not paid rent for

June 2012, so they are also seeking a \$25.00 late payment fee for both May and June as provided for in section 7 of their tenancy agreement.

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 of the *Act*.

Order of Possession - I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, and that Tenants are deemed to have received the Notice on May 8, 2012, three days after it was posted to their Door. The Tenants failed to pay the rent within 5 days after receiving this notice, and therefore the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, May 18, 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 \$165.00 for May 1, 2012 pursuant to section 26 of the *Act* which states 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 **\$165.00** for May 1, 2012 unpaid rent.

Loss of rent – As noted above this tenancy ended May 18, 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 are still occupying 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 **\$1,100.00** for use and occupancy and/or loss of June 2012 rent.

Late Payment Fees The Landlord is seeking \$25.00 for late payment fees for May 2012 and June 2012 in accordance with section 7 of their tenancy agreement. This

tenancy ended May 18, 2012, in accordance with the 10 Day Notice, therefore the Landlord may only make claim for late payment fees for May 2012 and not for June 2012, as the tenancy was no longer in effect at that time. Therefore I dismiss the Landlord's claim of \$25.00 for late fees for June 2012 and award them **\$25.00** for late payment fees for rent that was due May 1, 2012.

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

Monetary Order – I find that the Landlords are 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	\$ 165.00
Occupancy & Loss of rent for June 2012	1,100.00
Late Payment Fee May 2012	25.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,340.00
LESS: Security Deposit \$550.00 + Interest 0.00	<u>-550.00</u>
Offset amount due to the Landlord	<u>\$ 790.00</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 **\$790.00**. 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 26, 2012.

Residential Tenancy Branch