



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR 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 and to recover the cost of the filing fee from the Tenants for this application.

Service of the amended application and 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 Landlords' evidence. The Landlord advised that just prior to the hearing she checked the Canada Post website and the Tenants have ignored the notices and have not picked up the registered mail. Based on the submissions of the Landlord I find that each Tenant was sufficiently served notice of this proceeding and I note that previous case law has established that refusal to pick up registered mail does not negate or nullify service of documents.

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 submitted a copy of the tenancy agreement which supports that the parties entered into a written lease that began on November 1, 2008 and switched to a month to month tenancy after one year. Rent was previously \$850.00 per month and effective June 1, 2012 rent was increased to \$886.00 and is payable on the first of each month. The Tenants paid \$425.00 on October 8, 2008 as the security deposit.

The Landlord advised that on May 4, 2012 a 10 Day Notice to End Tenancy was posted to the Tenants' door and another copy slid under the door demanding payment of the

\$850.00 rent that was due May 1, 2012. On May 7, 2011 the Tenants paid \$700.00 cash towards the rental arrears leaving a balance due of \$150.00 for May 2012. The Landlord stated the Tenants are still occupying the unit and have not paid June 1, 2012 rent leaving an accumulated balance due of \$1,036.00 (\$150.00 + \$886.00).

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 Landlords have met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenants failed to pay the rent in full within 5 days after receiving this notice, and that the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The Tenants are deemed to have received the Notice three days after it was posted to their door, therefore the effective date of the Notice is May 17, 2012. Accordingly the Tenants must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*; therefore I approve the Landlord's request for an Order of Possession.

Claim for unpaid rent - The Landlord claims for unpaid rent of \$150.00 that was due on May 1, 2012, pursuant to section 26 of the *Act* which stipulates that 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. Accordingly I find the Landlord has met the burden of proof and I award them a monetary claim of **\$150.00** for May 1, 2012 unpaid rent.

Loss of rent – As noted above this tenancy ended May 17, 2012, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking payment for use and occupancy and 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 the month of June 2012.

Based on the aforementioned I find that the Landlords have succeeded in proving their loss, as listed above, and I approve their claim for **\$886.00** for occupancy and loss of June 2012 rent.

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 as follows:

Unpaid rent for May 2012	\$ 150.00
Loss of rent for April 2012	886.00
Filing Fee	<u>50.00</u>
TOTAL AMOUNT DUE THE LANDLORD	<u>\$1,086.00</u>

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

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 Tenant.

The Landlord has been awarded a Monetary Order for **\$1,086.00**. 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 27, 2012.

Residential Tenancy Branch