



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, MNR, MNSD, MNDC, 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 an Order of Possession for cause; 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. At the outset of the hearing the landlords' agent withdrew the application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement;

The tenants' agent and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to provide 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 an Order of Possession for cause?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on November 01, 2010. Rent for this unit is \$964.77.00 per month. Rent is due on the first of each month. The tenants paid a security deposit of \$462.50 on October 31, 2010.

The landlord's agent testifies that the tenants have been repeatedly late paying rent so a One Month Notice to End Tenancy was issued on May 08, 2012 and served upon the tenants in person on that date. This notice has an effective date of June 30, 2012 and states the tenants are repeatedly late paying rent. The Notice informs the tenants that they have 10 days to dispute the notice. The tenants did not dispute the One Month Notice.

The landlord's agent testifies that the tenants failed to pay rent for June, 2012 of \$589.77. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on June 07, 2012. This was posted to the tenant's door and was deemed to have been served three days after posting. This Notice states that the tenants owe rent of \$589.87. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on June 16, 2012. The tenants did not pay the outstanding rent or dispute the Notice within five days. The landlord has applied to recover the sum of \$1,554.54 however the landlord's agent has amended this claim during the hearing to \$589.77.

The landlords have applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlords have also applied for an Order of Possession to take effect within two days of service.

The tenant's agent does not dispute the landlords claim for unpaid rent.

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 that the tenants have failed to pay the balance of rent owed for June, 2012 and the landlord is entitled to recover rent arrears to the sum of **\$589.77.00** pursuant to s.67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$462.50** 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	\$589.77
Less Security Deposit	(-\$462.50)
Plus filing fee	\$50.00
Total amount due to the landlords	\$177.27

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 10 Day Notice is deemed to have been received by the tenants on June 10, 2012 and the effective date of the notice is amended to June 20, 2012 pursuant to section 53 of the *Act*. 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*.

With regards to the One Month Notice; as this notice was deemed to have been received by the tenants on May 08, 2012 the tenants had until May 18 to file an application to dispute the Notice. As the tenants failed to do so the tenants are conclusively presumed to have accepted the end of the tenancy. However as the landlord also severed the tenants with the 10 Day Notice the tenancy will end two days after service of the Order of Possession.

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 **\$177.27**. 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 landlord 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: June 22, 2012.

Residential Tenancy Branch