



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent, a monetary order for unpaid rent and utilities, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

I note one of the Tenants was present throughout the hearing, while the other Tenant was having long distance phone difficulties and was not present continuously.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the testimony of both parties, I find that the Tenants were served with a 10 day Notice to End Tenancy for non-payment of rent on or about June 5, 2012, by registered mail.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the

Notice. The Tenants did not dispute the Notice, nor did they pay all the rent and utilities due.

The Tenants and the Landlord agree that not all rent and utilities have been paid over the past three years at the rental unit.

The Landlord testified that he got along well with the Tenants and there were no disputes between the parties, other than an ongoing problem of rent and utilities payments being due. The Landlord testified that due to the good relationship between the parties he had been patient with the outstanding amounts owed.

The Landlord had initially attempted to add interest on the outstanding amounts owed, however, he withdrew this when informed that the Act and the Tenancy Agreement do not allow interest on outstanding rent.

The Landlord claims as follows:

Rent for October, November and December 2009, and January 2010,	7,200.00
Rent for October, November and December 2010, and January 2011	7,400.00
Utilities for above months	800.00
Rent for April, May, June and July of 2012	7,600.00
Utilities for above months	800.00
Balance of rent due for February 2012	171.70
Filing fee	100.00
Total	\$24,871.70

The Tenants agreed that this amount was due to the Landlord.

The parties agreed that the tenancy will end on August 31, 2012.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have not paid the outstanding rent or utilities as described above, and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Based on the agreement of the parties, I find that the Landlord is entitled to an order of possession effective **at 1:00 p.m. on August 31, 2012**. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$24,871.70** comprised of the amounts described above.

I order that the Landlord retain the deposit and interest of **\$1,008.81** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$23,862.89**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants failed to pay all rent and utilities and did not file an Application to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy. The Landlord is granted an Order of Possession based on the mutual agreement of the parties to be effective on August 31, 2012, and may keep the security deposit and interest in partial satisfaction of the monetary claim and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: July 16, 2012.

Residential Tenancy Branch