



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, OPB, MND, MNR, MNSD, ET, FF, O

Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent and utilities; For an Order of Possession for cause; for an Order of Possession because the tenant breached an agreement with the landlord, for an Early End to Tenancy; for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; 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.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on July 14, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

The landlord has requested an Order of Possession for cause however a One Month Notice to End Tenancy for cause has not been served on the tenants. The landlord seeks an Order of Possession because the tenant breached an agreement with the landlord however the landlord has not provided a copy of an agreement between the tenants and landlord; the landlord seeks an Early End to Tenancy however the landlord is not entitled to apply for an Early End to Tenancy along with other Orders of Possession. Consequently, these sections of the landlords claim have not been heard today and are dismissed without leave to reapply.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

The landlord testifies that this tenancy started on March 03, 2012 for a fixed term due to expire on August 31, 2012. Rent for this unit is \$1,100.00 per month and is due on the first day of each month in advance. The tenants paid a security deposit of \$550.00 on February 27, 2012.

The landlord testifies that he was notified on May 05, 2012 that the male tenant was no longer going to be living at the rental unit. The landlord asked the tenants if the male tenant was to be released from his obligations towards this tenancy and was told that the male tenant was to stay on the tenancy agreement. The landlord states he has no understanding of the tenants' relationship and deems that both tenants remain in possession of the rental unit.

The landlord testifies that the tenants failed to pay rent for July, 2012 of \$1,100.00. The tenants were served with a 10 Day Notice to End Tenancy for unpaid rent on July 03, 2012. This notice was served to the tenants by posting it to the door of the rental unit on July 03, 2012. The Notice notifies the tenants that they have five days to pay the outstanding rent or dispute the Notice or the tenancy will end on July 16, 2012. The landlord testifies that the tenants have not paid the rent arrears and the landlord seeks an Order of Possession and a Monetary Order to recover the rent arrears.

The landlord testifies that the male tenant removed some exercise equipment from the rental unit and caused damage to a door. The landlord testifies that he has not been able to have the door repaired at this time as the tenants remain in possession of the rental unit.

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 with the undisputed evidence before me that the tenants have failed to pay rent for July, 2012 and the landlord is entitled to recover rent arrears to the sum of **\$1,100.00** 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 **\$550.00** 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	\$1,100.00
Less Security Deposit	(-\$550.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$600.00

With regard to the landlord's application for a Monetary Order for damage to the unit, site or property; as the landlord has not yet been able to get the door in the unit repaired as he cannot yet gain access to the rental unit, I dismiss this section of the landlords claim with leave to reapply.

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 Notice is deemed to have been received by the tenants on July 06, 2012. The Notice states that the tenant has 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*.

As both tenants remain on the fixed term tenancy agreement both tenants remain equally responsible for the terms of the tenancy agreement. No forwarding address has been provided for the male tenant and the landlord is able to assume that both tenants remain in possession of the rental unit.

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 **\$600.00**. 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 landlords 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.

The landlord application for a monetary order for damage is dismissed with leave to reapply.

The remainder of the landlord's application is dismissed without leave to reapply.

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: July 27, 2012.

Residential Tenancy Branch