



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 was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent; 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.

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 September 21, 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 landlords agent 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.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid paid?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

The landlord's agent testifies that this tenancy started on December 15, 2011. This is a fixed term tenancy which is due to expire on December 31, 2012. Rent for this unit is \$840.00 per month and is due on the first day of each month in advance. The tenants paid a security deposit of \$420.00 on December 14, 2011.

The landlord's agent testifies that the tenants failed to pay the rent for September, 2012 of \$840.00. A 10 Day Notice was issued and served upon the tenants by posting it to their door on September 05, 2012. This Notice informed the tenants that they had five days to pay the outstanding rent or file an application to dispute the Notice or the tenancy would end on September 15, 2012. The landlords agent testifies that the tenants paid \$780.00 on September 10, 2012 and a further \$60.00 on September 30, 2012 plus a \$25.00 late fee. The tenants paid \$600.00 also on September 30, 2012 for Octobers rent and a further sum of \$240.00 on October 19, 2012. The landlord's agent testifies that these sums were accepted and marked for use and occupancy only.

The landlord's agent testifies that the tenants have now paid all outstanding rent and have given the landlord a Notice to end tenancy for November 15, 2012. The landlord seeks an Order of Possession for November 15, 2012 in the event the tenants do not vacate the rental unit.

The landlord's agent requests the tenants pay the \$50.00 filing fee for this application from the security deposit held in trust by the landlord.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent.

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 find that the tenants failed to pay all the due rent for September and October, 2012 on the day rent was due. However as the tenants have now paid all the outstanding rent and the landlord accepted this for use and occupancy only the payment of this rent does not reinstate the tenancy.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay all 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. The Notice was served by posting it to the tenants' door on September 05, 2012. Therefore the Notice was deemed to be served three days later on September 08, 2012 and the effective date of the Notice is amended to September 18, 2012 pursuant to s. 53 of the Act. I grant the landlord an order of possession pursuant to s. 55 of the *Act* effective at 1.00 p.m. on November 15, 2012.

The landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **on November 15, 2012 at 1.00 p.m.** This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed the **\$50.00** fee for filing this application. I order that the landlord retain this amount from the security deposit of \$420.00 leaving a balance \$370.00 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

The landlord's application for a Monetary Order for unpaid rent is no longer required and is therefore dismissed.

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: October 25, 2012.

Residential Tenancy Branch