



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession and monetary order for unpaid rent or utilities.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite each of the tenants being personally served with the Landlord's Application for Dispute Resolution and notice of hearing documents on September 12, 2012, neither of the tenants attended. The landlord testified that the documents were served in that fashion and on that date, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Has the landlord established a claim as against the tenants for a monetary order for unpaid rent or utilities?

Background and Evidence

The landlord testified that this month-to-month tenancy began in either August or September, 2011 and the tenants still reside in the rental unit. The rental unit is a basement suite in a house and the landlord resides in the upper unit. Rent in the amount of \$650.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$300.00 which is still held in trust by the landlord.

The landlord further testified that the tenants didn't pay rent in full for the month of July, 2012, having only paid \$500.00. The tenants further paid a portion of rent of August, 2012 in the amount of \$325.00 during the first week of August. No rent has been received for September, 2012 and now October's rent is overdue and the tenants have not made any payments to the landlord since the first week of August.

The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing a copy to each of the tenants on August 22, 2012. A copy of the notice was provided for this hearing and it is dated August 22, 2012 and contains an expected date of vacancy of August 31, 2012. The landlord also provided a proof of service document which shows that each of the tenants have acknowledged service of the notice. The tenants have not moved from the rental unit and the landlord claims an Order of Possession and a monetary order for the unpaid rent in the amount of \$1,775.00.

Analysis

The *Residential Tenancy Act* provides that if a tenant does not pay rent when it is due, the landlord may serve the tenant with a notice to end tenancy in the approved form. Once served, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out by that date.

In this case, I accept the undisputed testimony of the landlord that the tenants were served with the notice personally on August 22, 2012, and I find that the notice is in the approved form. The tenants have not disputed the notice and I find that the tenants are conclusively presumed to have accepted that the tenancy ended on August 31, 2012, and the landlord is entitled to an Order of Possession.

With respect to the monetary order, I accept that the tenants owe the landlord \$150.00 for rent for the month of July, 2012 as well as \$325.00 for the month of August, 2012. The tenants have not paid any rent for September or October, 2012 and I therefore find that the landlord is entitled to a monetary order for unpaid rent in the amount of \$1,775.00. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

The landlord currently holds the security deposit of \$300.00 in trust, and I find it prudent to order the landlord to keep the security deposit towards unpaid rent, and I grant the landlord a monetary order for the difference of \$1,525.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further order the landlord to keep the security deposit in the amount of \$300.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,525.00.

This order is final and binding on the parties and may be enforced.

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 17, 2012.

Residential Tenancy Branch