



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 an application made by the landlord for an Order of Possession and a monetary order for unpaid rent, for an order permitting the landlord to keep the security deposit, and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being individually served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on September 24, 2012, neither of the tenants attended. The landlord provided evidence of having served the tenants on that date and in that fashion, and I find that the tenants have been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes prior to any testimony, and the only participant who joined the conference call hearing was the agent for the landlord.

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?
Has the landlord established a monetary claim as against the tenants for unpaid rent?
Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on May 1, 2012 and expired on July 31, 2012 and then reverted to a month to month tenancy. The tenants still reside in the rental unit. Rent in the amount of \$840.00 per month is payable in advance on the 1st day of each month, and the landlord testified that rent is paid by way of a pre-

authorized debit from the tenants' bank account. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$420.00 which is still held in trust by the landlord.

The landlord further testified that the pre-authorized debit for rent for the month of August, 2012 was returned by the tenants' financial institution for insufficient funds. The tenants replaced the dishonoured debit in two installments to the landlord in the amount of \$420.00 each on August 28 and September 10, 2012. In the meantime, September's rent became due, and again the pre-authorized debit for September's rent was returned by the tenants' financial institution for insufficient funds. On September 12, 2012 the tenants gave the landlord \$100.00 towards September's rent.

On September 12, 2012 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy of the notice was provided for this hearing, and it states that the tenants failed to pay rent in the amount of \$740.00 that was due on September 1, 2012. The notice contains an expected date of vacancy of September 22, 2012.

No rent has been paid for the month of October, 2012.

The landlord claims an Order of Possession and a monetary order for unpaid rent in the amount of \$1,540.00 in addition to recovery of the \$50.00 filing fee for the cost of this application.

Analysis

The *Residential Tenancy Act* states that if a tenant fails to pay rent when it is due, the landlord may serve the tenant with a notice to end tenancy. Once served, or deemed served, the tenant must pay the rent within 5 days or dispute the notice. If the tenant pays the rent within 5 days, the notice has no effect. However, if the tenant does not pay the rent in full or dispute the notice within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no sooner than 10 days after the notice has been served, or deemed served on the tenant.

In this case, I am satisfied that the tenants were deemed to have been served with the notice on September 15, 2012 and the effective date of vacancy ought to read September 25, 2012. The *Act* also states that incorrect effective dates are automatically changed to the nearest date that complies with the *Act*, and I find that the earliest date that complies with the *Act* is September 25, 2012.

I further find that the tenants have not disputed the notice and are therefore conclusively presumed to have accepted that the tenancy ended on September 25, 2012, and the landlord is entitled to an Order of Possession.

I further accept the testimony of the landlord that the tenants owe \$740.00 for September's rent, and an additional \$840.00 for the month of October, 2012.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

I order the landlord to keep the security deposit in the amount of \$420.00 and I grant the landlord a monetary order for the difference, in the amount of \$1,210.00.

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 \$420.00 and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,210.00.

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 26, 2012.

Residential Tenancy Branch