



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 and for recovery of the filing fee for the cost of the application.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite each tenant being individually served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on September 28, 2012, none of the tenants attended. The landlord provided copies of receipts issued by Canada Post and registration receipts, and testified that the tenants were served on that date and in that manner, 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, and the only participant who attended the hearing was 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 for unpaid rent?

Background and Evidence

The landlord testified that this fixed-term tenancy began on August 24, 2012 and expires on August 31, 2013. Rent in the amount of \$880.00 per month is payable in advance on the 1st day of each month. During the month of August, 2012 the landlord collected a security deposit from the tenants in the amount of \$440.00 which is still held in trust by the landlord. A copy of the tenancy agreement has been provided which

contains the signatures of all three tenants, although the landlord testified that one of the tenants signed with an "X."

The landlord further testified that the tenants failed to pay rent in full for the month of September, 2012 and the landlord only received half of the rent. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 20, 2012 and personally served one of the tenants with that notice. A copy of the notice was provided for this hearing, and it is dated September 20, 2012 and states that the tenants have failed to pay rent in the amount of \$440.00 that was due on September 1, 2012 and contains an expected date of vacancy of September 30, 2012. The landlord further testified that both pages of the 2-page form were given to the tenant although the landlord has only provided a copy of the first page as evidence for this hearing, and the landlord and tenant both signed the acknowledgement of service which was also provided for this hearing.

The tenants further failed to pay rent in full for the month of October, 2012, leaving a balance outstanding of \$440.00. The landlord testified that the payments received for September and October, 2012 were paid directly to the landlord by a government ministry. One of the other tenants is paid the other half of the rent which is to be paid by that tenant to the landlord. That tenant told the landlord that it would be corrected so that the rent goes directly to the landlord from the ministry, but that has not happened. The ministry has also paid the landlord \$440.00 for November's rent.

The tenants have not served the landlord with an Application for Dispute Resolution.

The landlord claims an Order of Possession and a monetary order for unpaid rent in the amount of \$440.00 for September, 2012; \$440.00 for October, 2012 and \$440.00 for loss of revenue for the month of November, 2012.

Analysis

The *Residential Tenancy Act* states that if a tenant fails to pay rent on the date it is due, the landlord may issue a notice to end tenancy. Once served, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant pays the rent within that 5 day period, the notice is of no effect. However, if the tenant does not dispute the notice or pay the rent in full 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 less than 10 days after it is served.

In this case, I accept the testimony of the landlord that the tenants have failed to pay rent when it was due or within 5 days of being served with the notice to end tenancy. I

further find that the tenants were served by personally serving one of the tenants as evidenced by the acknowledgement of service. The tenants have not paid the rent and have not disputed the notice, and therefore, I find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, being September 30, 2012. I find that the landlord is entitled to an Order of Possession for unpaid rent.

With respect to the monetary order, I accept the testimony of the landlord that the tenants have only paid half of the rent for the months of September and October, 2012 and the landlord is entitled to recovery of the other half, being \$880.00. However, the landlord may be able to re-rent the unit by the middle of November, 2012, and therefore, I find that the landlord has not established any claim for November's rent. The ministry has paid the landlord half of the rent for that month.

The landlord has not applied for an order permitting the landlord to keep the security deposit in full or partial satisfaction of the landlord's claim, and I order the landlord to comply with Section 38 of the *Residential Tenancy Act* with respect to the security deposit held in trust.

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

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 grant a monetary order in favour of the landlord as against all three tenants, jointly and severally, in the amount of \$930.00.

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 31, 2012.

Residential Tenancy Branch