



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord requesting an order of possession based on unpaid rent, a monetary order for unpaid rent and utilities, an order to retain the security and pet damage deposits in partial satisfaction of the claim, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

This tenancy began July 1, 2012, with the parties entering into a one year, fixed term tenancy. The rent was set at \$1,600.00, and the Tenants were required to pay for heat and utilities under the tenancy agreement and an addendum to the agreement. The Tenants paid a security deposit of \$800.00 and a pet damage deposit of \$800.00 on or about June 15, 2012. I note no interest is payable on these deposits in 2012.

On September 4, 2012, the Tenants were personally served with a 10 day Notice to End Tenancy for non-payment of rent of \$1,600.00, with an indicated effective end date for the tenancy of September 14, 2012 (the "Notice").

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice. The appearing Tenant acknowledged that not all the rent had been paid and they did not dispute the Notice by filing an Application.

The Landlords had sent the Tenants copies of the heating oil and utility bills in their evidence packages along with the Notice of Hearing and Application. The Landlords had demanded payment of these bills in their Application. The heating oil owed is \$175.00 and the other utilities due are \$188.27. I also note the Landlords served all these documents to both Tenants individually by registered mailings, sent on September 18, 2012.

The appearing Tenant acknowledged they had also not paid October 2012 rent.

Both parties agree that the Landlords received \$853.98 from the Tenants on September 20, 2012, through a direct deposit to the Landlords' account, as partial payment for the amount due.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have not paid all the outstanding rent or bills, and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlords are entitled to an order of possession in these circumstances, and the Landlords consented to the order being effective **at 1:00 p.m. on October 22, 2012**. This order may be filed in the Supreme Court and enforced as an order of that Court. The appearing Tenant acknowledged she understood she has been ordered to vacate the rental unit at that time and date. She promised to do so.

I further find that the Landlords have established a total monetary claim of **\$3,613.27**, comprised of \$3,200.00 in rent for September and October 2012, \$363.27 for oil and utility bills, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlords retain both the deposit of \$1,600.00 and the \$853.98 paid through direct deposit, in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$1,159.29**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants failed to pay rent, oil and utilities and did not file to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlords are granted an Order of Possession, may keep the security deposit, pet deposit and direct deposit funds in partial satisfaction of the claim and are granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 18, 2012.

Residential Tenancy Branch