



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord only.

The landlord provided documentary evidence the tenants were served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 12, 2012 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenants on the 5th day after it was mailed.

Based on the evidence of the landlord, I find that the tenants have been sufficiently served with the documents pursuant to the *Act*.

The landlord testified the tenants moved out of the rental unit on or before September 30, 2012. As such there is no need for an order of possession and I amend the landlord's Application to exclude matters of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties in May 2012 for a 1 year fixed term tenancy beginning on June 1, 2012 for the

monthly rent of \$810.00 due on the 1st of each month and a security deposit of \$395.00 was paid. The tenancy agreement includes a clause stipulating a late payment fee of \$25.00 and any service charge fees from any financial institution in the event of late payment and/or returned cheques; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 2, 2012 with an effective vacancy date of September 12, 2012 due to \$810.00 in unpaid rent and a \$25.00 late fee.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the month of September 2012 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on September 2, 2012 at 9:00 a.m.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The landlord submits the tenants provided her with a cheque dated September 15, 2012 for rent and the late fee that was returned for insufficient funds. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on September 5, 2012 and the effective date of the notice is amended to September 15, 2012, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*. I also note that even though the tenants had provided the landlord with a rent cheque (that later was returned by the landlord's bank) the tenants provided that cheque after the 5 days allowed under Section 46(4).

Based on the foregoing, I find 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.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$860.00** comprised of \$810.00 rent owed; \$25.00 late fees; \$25.00 NSF charges and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$395.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$465.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 15, 2012.

Residential Tenancy Branch