



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 dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing on September 4, 2012, Canada post tracking numbers were provided as evidence, the tenants did not appear. I find that the tenants have been duly served in accordance with the Act.

The landlord appears gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

Based on the testimony of landlord, I find that the tenants were served with a notice to end tenancy for non-payment of rent on August 7, 2012, by personal service, which was witnessed. 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 landlord testified that the tenants owed \$1,010.00 as of August 1, 2012, this included \$60.00 owing for the month of July 2012 and \$950.00 owing for August 2012.

The landlord testified that the on August 7, 2012, the tenants paid \$300.00 towards outstanding rent and further payments were made by direct deposit into her account on August 13, 2012 and August 30, 2012. The landlord stated this gave the tenants a credit balance, however, she was not reinstating tenancy.

The landlord testified the tenants did not dispute the notice and did not pay all rent due within five days as required by the Act.

The landlord testified the tenants have not paid any further rent since August 30, 2012 they currently owe the amount of \$1,810.00 for September 2012 and October 2012.

Analysis

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

The tenants did not pay all outstanding rent within 5 days as required by the Act and the tenants 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 landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of **\$1,860.00** comprised of unpaid rent for September 2012 and October 2012 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of **\$450.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,410.00**.

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 within 5 days 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 landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 05, 2012.
