



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent. This matter was originally heard on October 5, 2011. The landlord appeared in the original hearing but the tenants did not. The landlord was granted an order of possession and a monetary order for \$1410. The tenants applied for and were granted a review consideration, and I was assigned and conducted a review hearing on this application.

The landlord and both tenants participated in the teleconference hearing. The landlord stated that she did not receive the tenants' new evidence. The tenants stated that they served the evidence on the landlord's windshield. I did not admit or consider the tenants' new evidence. However, I heard the tenants' testimony and made my determination based on the admissible evidence.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began on or about October 1, 2011. Rent in the amount of \$950 is payable in advance on the first day of each month. On August 7, 2012, the landlord served the tenants with a notice to end tenancy for non-payment of rent in the amount of \$1010.

Landlord's Evidence

The landlord stated that the tenants have constantly been behind in their rent, and they pay only partial rent each time. The tenants were paying partial rent through direct deposit, but they were not properly identifying their rental unit so the landlord could not accurately keep track of their rent payments. At the time of the review hearing, the tenants had not paid their rent for October 2012 or November 2012.

Tenants' Response

The tenants stated that they owed \$400 in rent on August 7, 2012, the date that they were served with the notice to end tenancy. The tenants paid the landlord \$350 on August 13, 2012, and they paid the remaining \$50 along with their September 2012 rent on August 30, 2012. The tenants stated that at the time of the review hearing, they were in arrears of \$150 for November 2012 rent.

Analysis

I find that the notice to end tenancy dated August 7, 2012 is valid. Based on the tenants' own testimony, they were in arrears on the date they were served with the notice, and they failed to pay the full amount they believed they owed within 5 days of receiving the notice to end tenancy. Further, the tenants did not apply to cancel the notice to end tenancy. I therefore find that the landlord is entitled to an order of possession.

I dismiss the landlord's monetary claim. On September 4, 2012, the landlord applied for \$850 in unpaid rent and \$950 anticipated lost revenue for October 2012. The landlord did not amend the monetary portion of her application, and she not provide sufficient clear evidence of the amount of rent the tenants owe.

As the landlord's application was only partially successful, I find she is not entitled to recovery of the filing fee for the cost of her application.

Conclusion

I confirm the order of possession granted October 5, 2012.

I vary the original decision in this matter to dismiss the landlord's monetary claim. The monetary order dated October 5, 2012 is therefore null and void.

I note that the landlord continues to hold the security deposit in trust, and it must be dealt with in accordance with the Act.

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: November 14, 2012.

Residential Tenancy Branch