



Dispute Resolution Services

Page: 1

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 filed on January 11, 2013, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; to keep the security and or pet deposit; and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlords be awarded an Order of Possession?
2. Should the Landlords be issued a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; receipts issued for payment of rent; a 10 Day Notice to end tenancy for unpaid rent issued January 3, 2013; and a 1 Month Notice to end tenancy issued for cause.

The parties agreed they entered into a month to month tenancy that began on August 2, 2012. Rent is payable on the 2nd day of each month in the amount of \$1,800.00 and on July 27, 2012 the Tenants paid \$900.00 as the security deposit.

The Landlord stated the Tenants have an accumulated balance due for rent in the amount of \$4,860.00 which consists of December 2012 rent of \$1,260.00 plus \$1,800.00 due for January 2013 and \$1,800.00 due for February 2013. They are seeking an Order of Possession for as soon as possible.

The Tenant confirmed receipt of the 10 Day Notice and the 1 Month Notice on January 3, 2013. They are still occupying the rental unit and they have not paid the outstanding rent for December 2012, January 2013 and February 2013. She argued that the rental unit is not ready to re-rent because of its condition and not because they have not paid rent.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants received the 10 Day Notice on January 3, 2012 and have not paid the outstanding rent for December 2012 or January 2013 and did not dispute the Notice. Therefore, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, **January 13, 2013**, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlords' request for an Order of Possession.

The Landlords claimed unpaid rent of \$1,260.00 for December 2012 plus \$1,800.00 that was due January 1, 2013. Failure to pay rent in accordance with the tenancy agreement is a breach of section 26 of the *Act*. Accordingly, I find the Landlords have met the burden of proof to claim for unpaid rent and I award them **\$3,060.00**.

As noted above this tenancy ended **January 13, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for overholding and use and occupancy of the unit, not rent, for February 2013.

The Landlord has the obligation to re-rent the unit as soon as possible. That being said the Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find suitable tenants. Therefore I award the Landlord **\$900.00** for overholding, use and occupancy, and loss of rent for the unit up to **February 15, 2013**. If the Landlords suffer additional losses as a result of this tenancy they are at liberty to file another claim.

The Landlords have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Rent (Dec. 2012 & Jan. 2013)	\$3,060.00
Over holding, Use and Occupancy	
And loss of rent up to Feb. 15, 2013	900.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$4,010.00
LESS: Security Deposit \$900.00 + Interest 0.00	<u>-900.00</u>
Offset amount held in trust	<u>\$3,110.00</u>

Conclusion

I HEREBY FIND the Landlords are entitled to an Order of Possession effective **Two (2) Days upon service to the Tenants**. This Order is legally binding and must be served upon the Tenants.

The Landlords have been awarded a Monetary Order in the amount of **\$3,110.00**. This Order is legally binding and must be served upon the Tenants.

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: February 05, 2013

Residential Tenancy Branch

