



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Group Medallion Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants and the landlord's agent attended the conference call hearing, gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord's agent testifies that the tenants were served the hearing package on February 19, 2013 and the tenant acknowledges receipt of these documents. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This fixed term tenancy started on October 0, 2012 and is due to expire on September 30, 2013. Rent for this unit is \$1,500.00 per month and is due on the 1st of each month. The tenants paid a security deposit of \$750.00 on September 27, 2012.

The landlord testifies that the tenants failed to pay all the rent for December, 2012 leaving an unpaid balance of \$300.00. The tenants failed to pay all the rent for January, 2013 leaving an unpaid balance of \$750.00 and the tenants failed to pay rent for February and March of \$1,500.00 for each month. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 03, 2013. This was served to the tenants in person on this date. This Notice states that the tenants owe rent of \$1,800.00.00 which was due on January 01, 2013. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on January 13, 2013. The tenants did not pay the outstanding rent or dispute the Notice within five days. The total amount of outstanding rent is now \$4,050.00. The landlord has requested to amend the application to include unpaid rent for March as the tenants continues to reside in the unit.

The landlord also requests an Order to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord requests an Order of Possession to take effect on as soon as possible

The tenant attending does not dispute the landlords claim for unpaid rent and understands the implications of not paying rent on the day it is due.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, I find that the tenants have failed to pay rent for December, 2012 of \$300.00; for January 2013 of \$750.00 and for February and March, 2013 of \$3,000.00 and the landlord is entitled to recover these rent arrears. I have allowed the landlord to amend this application to include unpaid rent for March, 2013 as the tenants continue to live in the rental unit and would be aware that rent is due on the first day of each month. Consequently, the landlord is entitled to a monetary award to the sum of **\$4,050.00**.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$750.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$4,050.00
Less Security Deposit	(-\$750.00)
Plus filing fee	\$50.00
Total amount due to the landlords	3,350.00

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that 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 and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,350.00**. The order must be served on the Respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service upon the tenants**. This order must be served on the Respondents and may be filed in the Supreme Court and 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: March 12, 2013

Residential Tenancy Branch

