



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent and for a Monetary Order for unpaid rent.

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on February 15, 2013. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

The landlord had applied for a Direct Request Proceeding to deal with this matter. A none participatory hearing took place on February 20, 2013 and the landlord was successful in obtaining an Order of Possession and a Monetary Order for \$750.00 for unpaid rent for January, 2013. The tenant applied for a review of that decision on the grounds of fraud and the tenant's application was granted and the original Decision and Order were suspended. A review hearing was scheduled for today's date.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlord testifies that this month to month tenancy started on April 18, 2011. Rent for this unit was \$1,250.00 per month and was due on the 1st day of each month.

The landlord testifies that the tenants failed to pay all the rent owed for January, 2013. The tenants paid \$500.00 on January 19, 2013 leaving an unpaid balance of \$750.00. The landlord testifies that the tenants were served a 10 Day Notice to End Tenancy for unpaid rent. This notice informed the tenants that they owed rent of \$750.00 and they had five days to pay the rent or dispute the Notice or the tenancy would end on February 05, 2013. The landlord testifies that this notice was served by posting it to the tenants' door with a covering letter on January 26, 2013. The landlord has provided a copy of the 10 Day Notice, the covering letter and the proof of service document duly witnessed by a third party in evidence.

The landlord testifies that since that time the tenants have failed to pay all the rent due for February, 2013. The tenant paid \$300.00 towards February rent and was informed that they still owe \$1,800.00 and the money paid was for use and occupancy only. The

landlord testifies that the tenants failed to pay rent for March of \$1,250.00. The landlord seeks to amend his application to include unpaid rent for February and March, 2013. The landlord testifies that he has another hearing date scheduled for May, 2013 to deal with the unpaid rent for February and March and the tenants have been served at their new addresses in accordance with the Residential Tenancy Act.

The landlord has also provided a copy of the tenancy agreement and receipts for rent paid in documentary evidence.

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 as the tenants have not appeared to dispute the landlord's evidence despite filing for a review of the original Decision and Order I find the landlord has established a claim for unpaid rent for January, 2013 to the sum of \$750.00. The original Order that was suspended has been confirmed and the landlord is at liberty to serve that Order upon the tenants.

The landlord has requested to amend this application to include unpaid rent for February and March, 2013 to the sum of \$2,200.00; as the tenants would not be aware that the landlord has requested to amend this application I am unable to agree to the landlord's request. However as the landlord has another hearing pending in May, 2013 to hear the matter of additional rent owed and I find the landlord will be able to deal with the matter at that hearing. The landlord is also at liberty to amend his application

pending for May prior to that hearing to deal with any other matters relating to the tenancy.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. I refer the parties to s. 82(3) of the *Act* which states:

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

I therefore confirm the Original Monetary Order issued to the landlord on February 20, 2013. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

As the tenants have vacated the rental unit the landlord no longer requires an Order of Possession and the Original Order that was suspended has now been set aside.

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: April 09, 2013

Residential Tenancy Branch