



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on a Notice to End Tenancy for unpaid rent and a monetary order for unpaid rent.

Only the Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified he served the Tenants with the Notice of Hearing by registered mail, sent on July 27, 2013. Under the Act, the Tenants are deemed served five days later. Despite this the Tenants did not appear at the hearing. I find the Tenants have been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Agent for the Landlord testified that the Tenants have already vacated the rental unit and therefore, an order of possession is no longer required.

As explained below, I have allowed the Landlord to amend the Application to include a claim against the security deposit for unpaid rent and to recover the filing fee for the Application.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to monetary relief?

Background and Evidence

Based on the affirmed testimony of the Agent for the Landlord and the evidence submitted, I find that the Tenants were served with a 10 day Notice to End Tenancy for non-payment of rent on July 17, 2013, by posting on the door. The Notice informed the Tenants they had five days to pay the rent or dispute the Notice by filing an Application for Dispute Resolution, otherwise the tenancy would end.

The Tenants have not paid all the outstanding rent and 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. According to the Agent, the Tenants vacated the rental unit sometime at the end of July without informing the Landlord.

Analysis

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

Although the Landlord is entitled to an order of possession in these circumstances, the Tenants have vacated the rental unit and therefore, an order of possession is no longer required.

I find that the Tenants have failed to pay rent under the Act and tenancy agreement. I find that the Landlord is still holding the security deposit of \$475.00, and has suffered a loss due to the breach of the Tenants. Under section 64 of the Act, I allow the Landlord to amend their claim to include a request to retain the security deposit. Furthermore, pursuant to section 72 of the Act, I allow the Landlord to retain the security deposit in partial satisfaction of the claim. I also allow the Landlord to amend this claim to include the filing fee for the Application, under section 64 of the Act.

I find the Landlords have established a total monetary claim of **\$945.00** comprised of \$895.00 for the balance of rent owed for July 2013, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord may retain the deposit of **\$475.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$470.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Landlord has leave to apply for further monetary orders.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy, and vacated the rental unit. Therefore, an Order of Possession is not required.

The Landlord is granted a monetary order for the balance of rent due and may keep the security deposit in partial satisfaction of the amount owed. The Landlord has leave to apply for further monetary compensation.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 12, 2013

Residential Tenancy Branch

