



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

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; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, and was served in person to both tenants on August 01, 2013.

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.

Issues 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?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that this month to month tenancy started on December 16, 2012. Rent for this unit is \$625.00 per month and is due on the 1st of each month. The tenants paid a security deposit of \$320.00 on December 16, 2012.

The landlord testifies that the tenants failed to pay all the rent for January, 2013 leaving an unpaid balance of \$165.00. The tenants failed to pay rent for July, 2013 of \$625.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on July 18, 2013. This was posted to the tenants' door on July 18, 2013. This Notice states that the tenants owe rent of \$790.00 which was due on June 30, 2013. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on July 28, 2013. The tenants did not pay the outstanding rent or dispute the Notice within five days. The landlord testifies that the tenants failed to vacate the rental unit by the effective date of the Notice and have failed to pay rent for August and September, 2013. The total amount of outstanding rent is now \$2,040.00.

The landlord requests an Order to retain the tenants' security deposit in partial payment towards the rent arrears and a Monetary Order for the balance. The landlord also requests to recover the \$50.00 filing fee from the tenants. The landlord requests an Order of Possession to take effect as soon as possible.

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.

I am satisfied from the evidence before me that the tenants owe rent of \$2,040.00 for January, July, August and September, 2013. Consequently, the landlord has established a claim for the sum of **\$2,040.00**.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$320.00** in partial payment of the rent arrears.

The landlord had applied for a further Monetary Order for money owed or compensation for damage or loss however as this concerned the matter of a loss of rental income this has been dealt with under unpaid rent and no further monetary amounts have been applied for at this time.

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 | \$2,040.00 |
| Less Security Deposit | (-\$320.00) |
| Plus filing fee | \$50.00 |
| Total amount due to the landlords | \$1,770.00 |

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 monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,770.00**. 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: September 06, 2013

Residential Tenancy Branch

