



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MacGregor Realty & Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute codes OPR MNR MNSD FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord's agent, the owner's husband and a translator called in and participated in the hearing. The tenants did not appear although they were served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on August 31, 2013.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Background and Evidence

This tenancy began on November 18, 2012 for a fixed term ending on May 31, 2014. The rent is \$4,000.00 due in advance on the first day of each month. The tenants paid a security deposit of \$2,000.00 at the start of the tenancy. The tenants did not pay the full amount of rent for July and they did not pay rent for August when it was due. On August 12, 2013 the landlord served the tenants with a Notice to End Tenancy for non-payment of rent by sending it to them by registered mail. The Notice to End Tenancy stated that the tenants failed to pay rent in the amount of \$6,800.00 that was due on August 1, 2013. This was made up of \$2,800.00 in arrears for July and \$4,000.00 due for August. The tenants did not file an application to dispute the Notice to End Tenancy. They paid the landlord the sum of \$1,500.00 on August 29, 2013, but they have not paid rent for September or for October.

On September 9, 2013 there was a hearing with respect to the tenants' application for dispute resolution. By decision dated September 10, 2013 the arbitrator found that the tenants were entitled to a one time award in the form of a deduction from the amount that was due for October rent in the amount of \$1,665.00 and further deduction of \$250.00 if the garage was not repaired by October. At the hearing before me, the landlord confirmed that the garage was not yet repaired and the total deduction from October rent granted to the tenants by the prior decision is the sum of \$1,915.00, leaving an amount due for October rent of \$2,085.00. The landlord has learned that the tenants have or will move out of the rental property shortly. The landlord said that subtenants allowed in the rental property without the consent of the landlord have not yet moved out.

The landlord stated at the hearing that the following amounts are due for rent:

• July arrears:	\$2,800.00
• August rent:	\$4,000.00
• September rent:	\$4,000.00
• Net October rent after permitted deductions:	\$2,085.00
• Less August 29 th payment:	-\$1,500.00
Total:	\$11,385.00

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenants do neither of these two things, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$11,385.00 for the outstanding rent from July to October, taking into account deductions awarded to the tenants. The landlord is entitled to recover the \$100.00 filing fee for this application for a total award of \$11,485.00. I order that the landlord retain the deposit and interest of \$2,000.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$9,485.00. This order may be filed in the Small Claims 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: October 09, 2013

Residential Tenancy Branch