



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACQUARIO BUILDING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on a 10 Day Notice to End Tenancy for unpaid rent, a monetary order for unpaid rent and for late payment fees, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Agents 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 Agents for the Landlord testified they served the Tenants with the Notice of this Hearing and the Application of the Landlord by serving both Tenants personally, one at the rental unit and the other at their place of work, on October 15, 2013. Despite this neither Tenant appeared 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.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an order of possession and monetary relief?

Background and Evidence

This tenancy started on August 1, 2013, with the parties entering into a written tenancy agreement, for rent of \$895.00 per month, payable on the first day of the month. The Tenants paid a security deposit of \$450.00 and a pet damage deposit of \$200.00.

The testimony of the Agents for the Landlord was that the Tenants failed to pay all of their October rent on the first day of the month. The Agents issued the Tenants a 10 day Notice to End Tenancy for \$895.00 in rent due on October 3, 2013, (the "Notice").

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice by filing an Application for Dispute Resolution.

The Tenants did not dispute the Notice by filing an Application. They made a partial payment of \$300.00 on or about October 3, 2013. The Tenants also informed the Agents that the Landlord could retain the pet deposit of \$200.00 towards the rent, as the Tenants no longer had a pet. The Landlord accepted this payment as well. On or about October 23, 2013, the Tenants paid the balance due for October rent; however, this was beyond the 5 day time limit allowed under the Notice and in the Act.

The Tenants also gave a Notice to End Tenancy for the end of November 2013, and promised to pay the November rent on time. Nevertheless, the Tenants failed to pay the November rent due in whole or in part.

The Landlord claims for November rent of \$895.00, a late fee under the Tenancy Agreement of \$25.00 and the \$50.00 filing fee for the Application.

Analysis

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

I find the Tenants have not paid 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.

Under section 26 of the Act, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority

under the Act to not pay rent. In this situation, there is no evidence before me that the Tenants had authority under the Act to not pay rent.

Therefore, 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.

I find that the Landlord has established a total monetary claim of **\$970.00**, comprised of unpaid rent of \$895.00, a late fee of \$25.00 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$450.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$520.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants failed to pay rent as required under the Tenancy Agreement and the Act, and did not file to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as 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 *Residential Tenancy Act*.

Dated: November 25, 2013

Residential Tenancy Branch

