



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. The hearing was conducted by conference call. The landlords 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 October 7, 2013. The registered mail sent to the tenants was returned to the landlord. According to Canada Post records, delivery of the registered mail was attempted. A notice card was left indicating where the item could be picked up. Ultimately the tenants refused to accept the registered mail delivery and it was returned to the landlord. I note that refusal to accept documents served by registered mail is not a valid excuse for failing to attend a hearing. By section 90 of the *Residential Tenancy Act* the tenants are deemed to have received the hearing documents on the 5th day after they were mailed to them.

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 August 1, 2012 for a one year term and thereafter month to month. The rent was 1,450.00 due in advance on the first day of each month. The landlord served the tenants with a Notice of Rent Increase on July 26, 2013, increasing the rent to \$1,478.00 per month effective November 1, 2013. The tenants paid a security deposit of \$725.00 and a pet deposit of \$725.00 at the start of the tenancy. During the tenancy the tenants failed to pay the electrical account, which was in their name and covered the rental unit and a second rental unit on the rental property. The power was turned off due to the non-payment. The landlord then placed the electrical

account in her name and the tenants signed an amendment to the tenancy agreement on August 3, 2013 whereby they agreed to pay their share of the electrical charges.

The tenants did not pay rent for September, 2013 when it was due. The tenants' cheque in payment of September's rent was dishonoured and returned to the landlord marked "NSF". On September 17, 2013 the landlord served the tenant, Mr. S.B with a Notice to End Tenancy for non-payment of rent. The tenants failed to pay rent for October and the landlord served a second 10 day Notice to End Tenancy on October 12, 2013 by leaving it with an adult occupant at the rental unit. The tenants have not paid rent for September, October or November and they did not file an application to dispute the Notice to End Tenancy.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenants 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 tenant. 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 \$4,378.00 for the outstanding rent for September, October and November. I find that the landlord is entitled to recover the Hydro reconnection charge of \$131.25 and 50% of the Hydro account that was billed on October 11, 2013 in the amount of \$308.63. The landlord is also entitled to recover the \$50.00 filing fee for this application for a total award of \$4,867.88. I order that the landlord retain the security and pet deposits of \$1,450.00 in partial satisfaction of the claim and I grant the landlord

an order under section 67 for the balance due of \$3,417.88. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord has leave to apply for a further monetary award if there are additional claims for cleaning, repairs or additional utility charges after the tenants have vacated the rental unit.

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: November 14, 2013

Residential Tenancy Branch

