



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; and to recover the filing fee from the tenants for the cost of this application. At the outset of the hearing the landlord attending withdrew their application for a Monetary Order for damage to the unit, site or property.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*; served in person on October 21, 2013.

One of the landlords 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.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent?
2. Are the landlords entitled to a Monetary Order for unpaid rent?
3. Are the landlords entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

The landlord attending testifies that this tenancy started on June 01, 2012 for a month to month tenancy. Rent for this unit is \$1,400.00 per month and is due on the 1st day of each month.

The landlord testifies that the tenants failed to pay all the rent for September and October, 2013. The tenants paid \$400.00 in October, 2013. The landlord testifies that a 10 Day Notice was issued to the tenants in person on October 12, 2013. The landlord has provided a copy of the Notice in evidence and shows that unpaid rent of \$2,160.00 was owed on October 12, 2013. The Notice has an effective date of October 22, 2013. The tenants paid \$400.00 on October 21, 2013 and two other payments of \$500.00 each on October 22 and October 28, 2013. The landlord accepted these payments for use and occupancy only.

The landlord testifies that the tenants then owed \$760.00 for October and failed to pay rent for November and now December, 2013. The total amount of outstanding rent is now \$3,560.00

The landlord testifies that there is a clause in the tenancy agreement which informs the tenants that a late fee of \$5.00 a day will be applied in any month in which rent is late. The landlord now realizes that the maximum they can charge a tenant for late fees is \$25.00 per month therefore the landlord seeks \$100.00 for September, October, November and December, 2013.

The landlord requests a Monetary Order for \$3,660.00 and an Order of Possession effective within two days of service to the tenants.

Analysis

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 with the undisputed evidence before me that the tenants have failed to pay rent for October, November and December 2013. Consequently, I find the landlords have established a claim for unpaid rent of \$760.00 for October and \$1,400.00 for November. However, as the landlord may still be able to re-rent the unit for part of December, after the tenants have vacated the unit, I will allow the landlord to recover unpaid rent up to December 15, 2013 of \$700.00. Therefore, the landlord is entitled to recover rent arrears to the sum of **\$2,860.00**. I further find the landlord is entitled to recover late fees for four months that rent has been late to an amount of **\$100.00** as the tenants were aware that late fees would be applied if rent was paid late in any month when they signed the tenancy agreement.

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 pursuant to s.67 of the *Act* for the balance owing as follows:

Outstanding rent	\$2,860.00
Late fees for four months	\$100.00
Filing fee	\$50.00
Total amount due to the landlord	\$3,010.00

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy pursuant to section 88 of the *Residential Tenancy Act*. The notice is deemed to have been received by the tenants on October 12, 2013. The Notice states that the tenants have five days to pay the rent or apply for Dispute

Resolution or the tenancy would end. The tenants did not pay all 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 section 55 of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$3,010.00**. 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 landlords effective **two days** after service on 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: December 02, 2013

Residential Tenancy Branch

