



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 an application by the landlord for an Order of Possession and a Monetary Order for: unpaid rent or utilities; to keep all or part of the pet damage or security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the “Act”), regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The landlord’s agent appeared for the hearing and provided affirmed testimony during the hearing and documentary evidence prior to the hearing. The landlord’s agent served the tenants each with a copy of the application and Notice of Hearing documents by registered mail. The landlord provided the Canada Post tracking receipts as evidence for this method of service.

The tenants were given ten minutes to appear for the hearing during which time there was no appearance, neither did any of the tenants submit documentary evidence prior to the hearing.

Section 90 of the Act states that a document served by mail is deemed to have been received five days after mailing. Based on this, and in the absence of any evidence from the tenants to contradict this, I find that the tenants were served the hearing documents by the landlord as required by the Act.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to unpaid rent for November, 2013, December, 2013 and January, 2014?
- Is the landlord entitled to keep all of the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that the tenancy began on October 3, 2013 for a fixed term of one year. The landlord and tenants signed a written tenancy agreement and the landlord collected a security deposit from the tenants in the amount of \$450.00 on October 3, 2013, 2013. Rent in the amount of \$900.00 was payable by the tenants to the landlord on the first day of each month.

The landlord's agent testified that the tenants failed to pay rent for the month of November, 2013. As a result, the landlord's agent served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 5, 2013 by posting it to the tenants' door. A proof of service document was submitted as evidence verifying this method of service. The notice shows an expected date of vacancy of November 15, 2013, for a total amount of \$900.00 of unpaid rent due on November 1, 2013.

The landlord's agent testified that the tenants also failed to pay for December, 2013 and January, 2014 rent and as a result, claims a total of \$2,700.00 in unpaid rent from the tenants and an Order of Possession as one of the tenants is still residing in the unit.

Analysis

I have reviewed all the documentary evidence and I am satisfied that that the notice to end tenancy was correctly served to the tenant as evidenced by the proof of service document and that the contents of the notice to end tenancy conformed with the requirements of the Act.

The Act states that documents served by posting to the door are deemed to have been received 3 days after such posting. Therefore, I find that the tenants were deemed to be served the notice to end tenancy on November 8, 2013 and as a result, the effective date of the notice to end tenancy is automatically changed to November 18, 2013 pursuant to Section 53 of the Act.

I accept the evidence before me that the tenants have failed to dispute the notice or pay the full rent owed within the 5 days provided under Section 46(4) of the Act. Therefore, 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. I therefore find that the landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent in the amount of \$2,700.00.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenants the \$50.00 filing fee for the cost of this application. Therefore, the total amount awarded to the landlord is \$2,750.00.

As the landlord already holds a \$450.00 security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the landlord is awarded \$2,300.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the landlord effective **2 days after service on the tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I further grant a Monetary Order in the amount of **\$2,300.00** in favor of the landlord pursuant to Section 67 of the Act. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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: January 16, 2014

Residential Tenancy Branch

