



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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. The landlord also applied to keep all or part of the pet damage or security deposit and to recover the filing fee from the tenants for the cost of this application.

The landlord appeared for the hearing and provided affirmed testimony during the hearing and documentary evidence prior to the hearing. The landlord served the tenants with a copy of the application and Notice of Hearing documents by registered mail. The landlord provided the Canada Post tracking number 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 and by the landlord as required by the *Residential Tenancy Act* (referred to as 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 testified that the tenancy began on September 17, 2013 for a fixed term due to end on May 31, 2014. The landlord and tenants signed a written tenancy agreement, which was provided as evidence, and the landlord collected a security deposit from the tenants in the amount of \$800.00 on September 17, 2013. The landlord testified that rent in the amount of \$1,600.00 was payable by the tenants to the landlord on the first day of each month.

The landlord testified that the tenants failed to pay rent for the month of November, 2013. As a result, the landlord personally served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 15, 2013. A proof of service document was submitted as evidence by the landlord showing a witness signature verifying this method of service and on one of the tenant's signature acknowledging receipt of the notice. The notice shows an expected date of vacancy of November 25, 2013, for a total amount of \$1,600.00 of unpaid rent due on November 1, 2013.

The landlord's agent testified that she had claimed an anticipated amount of rent for: December, 2013; January, 2014; and February, 2014, in the amount of \$5,600 on the application. However, the landlord testified that, at the time of this hearing, the tenants have also failed to pay for December, 2013 and January, 2014 rent and as a result, claims a total of \$4,800.00 in unpaid rent from the tenants and an Order of Possession.

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 meet the requirements 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 \$4,800.00.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenants the \$100.00 filing fee for the cost of this application. Therefore, the total amount awarded to the landlord is \$4,900.00.

As the landlord already holds an \$800.00 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 \$4,100.00.

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 **\$4,100.00** 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 23, 2014

Residential Tenancy Branch

