



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX Commercial Solutions
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This is the Landlord's application for an Order of Possession and Monetary Order for unpaid rent and loss of revenue; to apply the security deposit towards partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenants..

The Landlord's agent testified that he served the Tenants with the Notice of Hearing package and copies of his documentary evidence, by registered mail, to the rental unit on December 2, 2013. He provided the tracking number for the registered mail and stated that he sent both Tenants' copies in the same envelope. The Tenants agreed that they had both seen the Landlord's Application for Dispute Resolution and that they had an opportunity to consider the Landlord's documentary evidence. Therefore, I find that both Tenants were sufficiently served with the Notice of Hearing documents for the purposes of this Hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy commenced on October 1, 2012. Monthly rent is \$700.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$350.00 on September 18, 2012.

A copy of the Notice to End Tenancy issued November 13, 2013 (the "Notice") was provided in evidence. The Tenants acknowledged receiving the Notice on November 13, 2013.

The Tenant GS agreed that the rent remains outstanding. GS stated that the Landlord has not done required repairs to the rental unit.

GS also testified that he had his hours cut at work, but that he recently got more hours so he can pay the Landlord the outstanding rent at the rate of \$500.00 every two weeks until he is caught up.

The Landlord's agent GM stated that the Tenants are now in arrears for 7 months and therefore declined to accept GS's offer to settle the matter.

GM stated that the Landlord seeks a monetary award, calculated as follows:

Outstanding rent for August, 2013	\$200.00
Outstanding rent for September to November, 2013	\$2,100.00
Loss of revenue for December, 2013 and January, 2014	<u>\$1,400.00</u>
TOTAL	\$3,700.00

GM asked for an Order of Possession, effective January 31, 2014.

Analysis

I find that the Tenants received the Notice on November 13, 2013. The Tenants did not file an Application to cancel the Notice or pay the outstanding rent in full within the 5 days allowed 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 August 26, 2013.

I advised the Tenants that Section 26 of the Act requires that rent be paid when it is due (whether or not the Landlord complies with the Act, regulation or tenancy agreement,) unless the Tenants have authority under the Act to withhold or deduct rent. In this case, the Tenants had no such authority.

For the reasons set out above, I find that the Landlord is entitled to an Order of Possession and a monetary award in the amount of \$3,700.00 for unpaid rent and loss of revenue.

Further to the provisions of Section 72 of the Act, I allow the Landlord to apply the security deposit towards partial satisfaction of its monetary award.

The Landlord's Application had merit and I find that it is entitled to recover the cost of the \$50.00 filing fee from the Tenants.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Unpaid rent and loss of revenue	\$3,700.00
Recovery of the filing fee	\$50.00
Less set off of security deposit	<u>-\$350.00</u>
Total	\$3,400.00

Conclusion

Pursuant to the provisions of Section 55 of the Act, I hereby provide the Landlord with an Order of Possession effective **1:00 p.m., January 31, 2014**, for service upon the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Pursuant to the provisions of Section 67 of the Act, I hereby provide the Landlord with a Monetary Order in the amount of **\$3,400.00** for service upon the Tenants. This Order 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 22, 2014

Residential Tenancy Branch

