



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 the landlords' application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlords to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants and one of the landlords attended the conference call hearing and gave sworn testimony. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord was permitted to provide additional evidence after the hearing had concluded. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession due to unpaid rent?
- Are the landlords entitled to a monetary Order to recover unpaid rent?
- Are the landlords entitled to keep the security deposit?

Background and Evidence

The parties agree that this fixed term tenancy started on September 04, 2013 and is due to expire on August 31, 2014. Rent for this unit is \$2,000.00 per month. Rent is due on the first of each month. The tenants paid a security deposit of \$380.00 on at the start of the tenancy however the remainder of the deposit of \$620.00 has not been paid.

The landlord testifies that the tenants owed an amount of \$200.00 in rent for December, 2013. The tenants failed to pay rent for January, 2014 on the day it was due. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 14, 2014. This was posted to the tenants' door on January 14, 2014. This Notice informs the tenants that they have five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on January 24, 2014. The tenants did not pay the outstanding rent or dispute the Notice within five days. The tenants did pay \$1,060.00 on January 27, 2014. Since that time the tenants have also failed to pay rent for February, 2014 to the sum of \$2,000.00. The landlord requests a Monetary Order to recover the unpaid rent. The total amount of outstanding rent is now \$3,140.00.

The landlord testifies that he had spoken to the tenants and told them that if they catch up on their rent arrears and pay Februarys rent on time the landlord will reduce the tenants rent to \$1,800.00 from February, 2014. The landlord testifies that as the tenants did not catch up with the outstanding rent or pay rent for February then this offer was rescinded by the landlord.

The landlord has applied to retain the tenants' security deposit of \$380.00 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect on February 21, 2014.

The tenant does not dispute the landlords' claim that they owe rent. The tenant disputes the landlords claim that they owe \$200.00 for December and states that they had paid a

further \$400.00 in cash to the landlords' mother in January so therefore do not owe \$940.00 for January. The tenant agrees that they have not paid rent for February.

The tenant testifies that the landlord accepted the rent and therefore the tenancy should continue as the landlord agreed that the tenants could have time to pay the arrears.

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.

Consequently I am satisfied with the evidence before me that the tenants have failed to pay rent of \$200.00 for December 2013; \$940.00 for January, 2014 and \$2,000.00 for February, 2014. The landlords have therefore established a monetary claim for **\$3,140.00** pursuant to s.67 of the *Act*. I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$380.00** in partial payment of the rent arrears.

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 for the balance owing as follows:

Outstanding rent	\$3,140.00
Less Security Deposit	(-\$380.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$2,810.00

I have reviewed all documentary evidence and accept that the tenants have been served with a 10 Day 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 January 17, 2014 and therefore the effective date of the Notice is amended to January 27, 2014 pursuant to s. 53 of the Act.. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor did the tenants apply to dispute the Notice to End Tenancy within five days.

The tenant has testified that the landlord has reinstated the tenancy by accepting rent after the Notice was given. If the tenant pays any rent up to the effective date of the Notice which in this case was January 27, 2014 then the landlord can accept that money as it is rent owed to the landlord and the landlord is not required to inform the tenant that this money was accepted for use and occupancy only. Consequently as the tenants paid a portion of the outstanding rent on January 27, 2014 by accepting this money I find the landlord did not reinstate the tenancy.

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 favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,810.00**. 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 **on February 21, 2014** 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: February 14, 2014

Residential Tenancy Branch

