



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 723 Field Street Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent and for a Monetary Order for unpaid rent. This hearing was originally heard as a Direct Request Proceeding but could not proceed due to factors associated to the landlord's documentary evidence. The matter was adjourned and reconvened for a participatory hearing held today.

Service of the original hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on January 22, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*. The landlord served the tenants with the Reconvened Notice of hearing in person on January 31, 2014.

The landlord's agent 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

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlord attending testifies that this 12 month fixed term tenancy started on September 01, 2010 and is now a month to month tenancy. The current landlord purchased the building after this date. Rent for this unit is \$800.00 per month. Rent is due on the first of each month.

The landlord testifies that the tenants failed to pay all the rent for January, 2014 leaving an unpaid balance of \$275.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 07, 2014. This was served in person to the tenants on this date. This Notice states that the tenants owe rent of \$275.00 that was due on January 01, 2014. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on January 20, 2014. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants have also failed to pay rent for February and March, 2014. The landlord requests to amend the application to include the unpaid rent for February, 2014 only of \$800.00. The landlord seeks a Monetary Order for \$1,075.00.

The landlord has also applied for an Order of Possession to take effect within two days of service.

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 undisputed evidence before me that the tenants have failed to pay rent for January, 2014 of \$275.00 and for February, 2014 of \$800.00. I will allow the landlord to amend the application to include unpaid rent for February as the tenants continue to reside in the rental unit and would be aware that rent was due on February 01, 2014. The landlord is entitled to recover rent arrears to the sum of **\$1,075.00** pursuant to s.67 of the *Act*.

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 January 07, 2014. 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 the outstanding rent within five days nor applied 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 favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,075.00**. 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: March 21, 2014

Residential Tenancy Branch

