



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mennonite Benevolent Society - Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR. FF

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; for a Monetary Order for unpaid rent, and to recover the filing fee from the tenants for the cost of this application. During the hearing the landlord withdrew their application for a Monetary Order for money owed or compensation under the Residential Tenancy Act (Act), regulations or tenancy agreement.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the Act; served by registered mail on March 03, 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's agents appeared, gave sworn testimony, were 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 testifies that the male tenant moved into this unit on December 04, 2012. The female tenant moved into the unit in September, 2013 but did not sign the new month to month tenancy agreement which included her as a tenant until October 21, 2013. Rent for this unit is \$640.00 per month. Rent is due on the first of each month.

The landlord testifies that the male tenant owed rent of \$75.00 from August, 2013 and a further \$65.00 from September, 2013. After the female tenant moved into the unit the tenants failed to pay all the rent for October, 2013 leaving an unpaid balance of \$140.00. The tenants failed to pay any rent for November, December, 2013 or January, 2014. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 02, 2014. This Notice was posted to the tenants' door. This Notice states that the tenants owe rent of \$1,370.00 that was due on December 01, 2013. The landlord testifies that their calculations are in error for the amount shown on the 10 Day Notice. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on January 12, 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 the rent for February, March and April, 2014. The landlord requests to amend the application to include the unpaid rent for April, 2014 as the tenants continue to reside in the rental unit. The landlord seeks a Monetary Order to recover unpaid rent of \$4,252.00.

The landlord seeks an Order of Possession to take effect within two days of service and seeks to recover the \$50.00 filing fee. The landlord has provided a detailed rent ledger and a copy of the 10 Day Notice in documentary evidence.

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.

The landlord has applied to recover unpaid rent from both tenants for a period prior to the female tenant becoming a tenant of this rental unit. As the female tenant had no obligation under the *Act* to pay any rent outstanding for a period prior to her tenancy commencing I am not prepared to consider the landlords claim for unpaid rent for August and September, 2013 of \$140.00 under this application. The landlord is however at liberty to file an application to recover unpaid rent against the male tenant only for the period of his tenancy.

Consequently, I am satisfied with the undisputed evidence before me that the tenants have failed to pay rent for October, 2013 of **\$140.00** and from November, 2013 to April, 2014 to an amount of **\$3,840.00**. I will allow the landlord to amend the application to include unpaid rent for April, 2014 as the tenants have continued to reside in the rental unit and would be aware that rent was due for April. The landlord is entitled to a Monetary Order to the sum of **\$3,980.00** 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 *Act*. The Notice is deemed to have been received by the tenants on January 15, 2014. Consequently the effective date of the Notice is amended to January 25, 2014 pursuant to s. 53 of the *Act*.

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 did the tenants apply 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 amended effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

The landlord is also entitled to recover the **\$50.00** filing fee pursuant to s. 72(1) of the *Act*. This amount has been included in the Monetary Order.

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 **\$4,030.00**. 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: April 22, 2014

Residential Tenancy Branch