



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

A copy of the tenancy agreement signed by the parties on March 25, 2005 indicates the tenancy started April 1, 2005 and the tenants were initially obligated to pay \$720.00 rent monthly in advance on the first day of the month. The tenants also paid a security deposit of \$360.00. The landlord gave evidence that the rent is currently \$850.00.

The landlord gave evidence that he served the tenants with a Notice to End Tenancy for Unpaid Rent (the "Notice") by posting the Notice on the tenants' door on April 15, 2014. Section 90 provides that a notice served in this manner is deemed to be received by the tenants three days later, on April 18, 2014. The Notice states the tenants failed to pay rent of \$9,500.00 that was due April 15, 2014.

The landlord provided a copy of a letter to the tenant dated March 15, 2014 in which the landlord sets out the record of rent payments and balance owing for 2013 and 2014. The letter indicates that the total unpaid rent at April 15, 2014 was \$9,500.00.

The landlord's evidence is that the tenants have made no further payments and they continue to occupy the rental unit.

The tenant gave evidence that he agrees the landlord's record of unpaid rent set out in the March 15, 2014 letter is correct. The tenant gave evidence that he spoke to the landlord immediately after receiving the Notice and the landlord agreed the tenants could disregard the Notice.

The landlord's evidence is that he told the tenant he could disregard the Notice if the tenant made a payment of double one months' rent (\$1,700.00) by April 18, 2014 however the tenant did not do so. The landlord's evidence is that he has previously made agreements with the tenant to pay off the balance of unpaid rent by making double rent payments, however the tenant has not kept the agreements.

Analysis

I find the tenants received the Notice on April 18, 2014. I accept the landlord's evidence that the tenants have made no further payments. According to Section 46(5), if a tenant does not pay the rent or make application for dispute resolution within five days of receiving the Notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. For these reasons, I find that the landlord is entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

The landlord agrees that the order of possession will be effective May 31, 2014, in order to give the tenants time to find new accommodation.

I accept the landlord's evidence that the tenants continue to occupy the rental unit. For that reason, I find it is appropriate that I allow the landlord to amend his Application for Dispute Resolution to include a claim for May 2014 rent of \$850.00. The landlord is entitled to recover \$10,350.00 unpaid rent. The landlord is also entitled to recover his RTB filing fee of \$100.00. I grant the landlord a monetary order for \$10,450.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The security deposit of \$360.00 is deemed to have accrued interest of \$12.73 since April 2005, and now totals \$372.73. The parties may apply this amount to the outstanding debt if they agree to do so. If they do not so agree, the landlord will follow the provisions set out in Section 38 of the Act regarding the security deposit.

Conclusion

I grant the landlord an order of possession and a monetary order for \$10,450.00.

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: May 16, 2014

Residential Tenancy Branch

