



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0709809 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord company attended the hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents, no one for the tenants attended. The landlord's agent testified that the documents were served personally to one of the tenants on April 11, 2014 but the other tenant was not at the rental unit at the time, and that tenant's copy was sent by registered mail on April 14, 2014. Proof of that service has been provided, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

The line remained open while the phone system was monitored for 10 minutes prior to taking any other testimony, and the only participant who joined the call was the landlord's agent.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?

- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for late fees?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on March 1, 2013 and the tenants still reside in the rental unit. A tenancy agreement has been provided which is an agreement between the landlord company, one of the tenants named on the Landlord's Application for Dispute Resolution and another tenant. The landlord's agent testified that the other tenant moved out and the tenant named in the application moved in during the tenancy. Rent in the amount of \$850.00 per month is payable in advance on the 1st day of each month. The tenancy agreement was signed by the parties on February 23, 2014 at which time the landlord collected a security deposit from the tenants in the amount of \$425.00 which is still held in trust by the landlord.

The landlord's agent further testified that the tenants have been constantly late with the rent. As of January, 2014 rental arrears totalled \$622.50. Partial payments have been made which were recorded on a document initialled by the tenants where the balance outstanding is recorded. The newer tenant's portion of the rent is paid directly to the landlord by a government Ministry.

The landlord's agent testified that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 2, 2014 by posting it to the door of the rental unit. The landlord has provided a copy of the notice and proof of service document which also contains a signature of a witness. The notice is dated April 2, 2014 and contains an expected date of vacancy of April 12, 2014. It states that the tenants failed to pay rent in the amount of \$1,047.50 that was due April 1, 2014 and both pages of the 2-page form have been provided.

Since the issuance of the notice, the tenants paid the landlord \$240.00 and the landlord provided a receipt that has marked on it "For Use and Occupancy Only.. The landlord has also received a cheque from the Ministry for \$425.00 for the month of May but has not yet deposited it. The tenant advised the landlord's agent that he will need that money to secure a new rental unit.

The landlord has not been served with an application for dispute resolution by the tenants disputing the notice.

Analysis

The *Residential Tenancy Act* states that a tenant must either pay the rent in full or dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities within 5 days of service. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no less than 10 days after service. In this case, I accept the testimony and evidence provided by the landlord's agent that the tenants were served with the notice by posting it to the door of the rental unit on April 2, 2014. The *Act* states that documents served in that manner are deemed to have been served 3 days later, which I find is April 5, 2014. The effective date of vacancy, therefore, must be no sooner than April 15, 2014. The *Act* also specifies that incorrect effective dates contained in a notice to end tenancy are changed to the nearest date that complies with the *Act*, which is April 15, 2014. The tenants have not disputed the notice and have not paid the rent in full, and I find the tenants are conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession.

I am also satisfied by the running record initialled by the tenants that they are currently in arrears of rent the sum of \$807.50 to the end of April, 2014, and that by virtue of the payment of rent, the newer tenant is also a tenant under the *Act*. I find that the landlord has established a monetary claim as against both named tenants in the amount of \$807.50.

With respect to rent for the month of May, the landlord has not made such an application and the landlord's agent did not provide any testimony other than to state that the Ministry has sent the money but the landlord's agent has not yet cashed the cheque. The *Act* states that a tenant must pay rent when it is due, and I leave it to the landlord to determine whether or not to cash the cheque, but I make no orders with respect to rent for May, 2014 or for late fees.

I hereby order the landlord to keep the security deposit in the amount of \$425.00 in partial satisfaction of the claim, and I grant the landlord a monetary order for the difference. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further order the landlord to keep the \$425.00 security deposit and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$432.50.

These orders are final and binding and may be enforced.

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 07, 2014

Residential Tenancy Branch

