



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUDSON MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, FF
OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by both the Landlords and the Tenant.

The Landlords applied for an Order of Possession and a Monetary Order for: unpaid rent or utilities; to keep all of the security deposit; and to recover the filing fee from the Tenants. One of the Tenants named in the Landlord’s Application applied to: cancel the notice to end tenancy; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and to recover the filing fee.

The Landlord, who was also representing the company named on her Application, appeared for the hearing and provided affirmed testimony during the hearing as well as written evidence in advance of the hearing.

The Tenants failed to appear for the 52 minute duration of the hearing despite one Tenant making an Application for which he was given the same date and time of this hearing. In addition, apart from the notice to end tenancy, the Tenant did not provide any further written evidence in advance of the hearing. As a result, I dismiss the Tenant’s Application without leave to re-apply.

The Landlords served a copy of the Application, the Notice of Hearing documents and a copy of the evidence used in this hearing to the Tenants by registered mail, pursuant to section 89(1) (c) of the Act. The Landlord provided the Canada Post tracking number during the hearing as evidence for this method of service. Section 90(a) of the Act states that a document served in this way is deemed to have been received five days after it is

mailed. Therefore, in the absence of any evidence by the Tenants to refute this, I find that the Tenants were deemed served the documents under the Act.

I have carefully reviewed the undisputed affirmed testimony of the Landlord as well as the written evidence submitted prior to the hearing in this decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep all of the Tenants' security deposit in partial satisfaction of the Landlord's claim?

Background and Evidence

The Landlord testified that the tenancy began in May, 2010 on a month to month basis. Rent in the amount of \$1,000.00 was payable at the start of the tenancy and this was increased to \$1,200.00 during the tenancy; the rent was payable on the first day of each month.

The tenancy involved three Co-tenants who together paid a security deposit at the start of the tenancy. The Landlord testified that a hearing was conducted on March 11, 2014 during which the arbitrator issued a written decision allowing the Tenants to make a deduction of \$150.00 from their next month's rent; this amount accounted for an extra amount the Landlord had taken from the Tenants at the start of the tenancy in the form of a security deposit. As a result, the written decision dated on March 11, 2014 determined that the Landlord would hold \$500.00 as a security deposit for this tenancy which the Landlord confirmed she currently does.

The Landlord testified that as a result of the hearing on March 11, 2014, the rent payable by the Tenants after the deduction of \$150.00 was made, was \$1,050.00 payable on April 1, 2014. The Landlord testified that she was paid \$800.00 as a cheque from two of the Tenants ("WA" and "DW") and \$250.00 from the third Tenant ("RV"); the cheques were all provided to the Landlord on April 1, 2014.

The Landlord testified that on April 7, 2014 RV's cheque in the amount of \$250.00 was returned unpaid because the Tenant's account had been closed. The Landlord provided a copy of RV's returned cheque from the bank.

As a result, the Landlord served the Tenants personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on April 7, 2014. The Notice was provided as evidence and shows an amount of \$250.00 outstanding from the original rent of \$1,200.00 due on April 1, 2014 with an expected date of vacancy of April 17, 2014.

The Landlord testified that the Tenants have also failed to pay for June, 2014 rent in the amount of \$1,200.00. As a result, the Landlord seeks to recover lost rent from the Tenants for a total amount of \$1,450.00 and an Order of Possession.

Analysis

Sections 46(4) and (5) of the Act states that within five days of a Tenant receiving a Notice, a Tenant must pay the overdue rent or make an Application to dispute the Notice; if the Tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice, I find that the contents complied with the requirements of the Act. As a result, I accept that the Tenants were personally served by the Landlord with the Notice on April 7, 2014.

While one of the Tenants did make an Application within the allowable time limits to dispute the Notice, the Tenant failed to appear for the hearing to dispute the Landlord's testimony and provide testimony as to why the rent was not paid. As a result, I accept the Landlord's undisputed testimony and written evidence, including the Notice and a copy of the returned cheque, that the Tenants owe the Landlord **\$1,450.00** in unpaid rent and that the Landlords are entitled to an Order of Possession.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the **\$50.00** filing fee for the cost of her Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlords is \$1,500.00.

As the Landlord already holds \$500.00 in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the Landlords are awarded \$1,000.00.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **2 days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenants fail to vacate the rental unit.

I also grant the Landlord a Monetary Order pursuant to section 67 of the Act in the amount of **\$1,000.00**. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The Tenant's application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 03, 2014

Residential Tenancy Branch

