



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

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

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 as claimed?

Background and Evidence

The tenancy agreement signed by the parties indicates the tenancy started on September 1, 2013 and was for a fixed term ending August 31, 2014. According to the tenancy agreement, the tenants were obligated to pay rent of \$800.00 per month in advance payable on the first day of the month for September and October 2013, and then \$850.00 per month for the balance of the fixed term. The landlord gave evidence that he and his wife decided to keep the rent at \$800.00 per month after October 2013 to assist the tenants (rather than raising it to \$850.00). The tenants paid a security deposit of \$300.00 and a pet deposit of \$100.00.

The tenancy agreement indicates the tenants are responsible to pay 25% of electricity and water costs over a certain base dollar amount per month.

The landlord gave evidence that he served the tenants with a notice to end tenancy for unpaid rent (the "Notice") by personal service on May 20, 2014. The Notice indicates the tenants failed to pay rent in the amount of \$1,100.00 that was due on May 1, 2014

and failed to pay utilities in the amount of \$230.13. The landlord provided a copy of his ledger for the rental property (the "Landlord's Ledger"). The Landlord's Ledger indicates the total outstanding balance for the rental property was \$1,330.13 on May 20, 2014. The ledger indicates the tenants often made partial rent payments and made only one payment toward utilities of \$44.00. The landlord gave evidence that he subtracted the outstanding utility amounts to arrive at the rent owing at May 20, 2014.

The landlord gave evidence that the tenants made a payment of \$450.00 toward rent on May 25, 2014 and another payment of \$400.00 on May 30, 2014. Since then, rent for June 2014 of \$800.00 has come due and the tenants have made no further payments. According to the Landlord's Ledger, the tenants' outstanding balance for rent and utilities is now \$1,280.13.

The tenants do not dispute the landlord's calculations. However, the tenant says they should not have to pay any amounts for utilities because the windows are cracked and the door does not close completely and so heat is lost. The tenant gave evidence that the landlord promised to repair and put plastic on the windows and did not do so.

The landlord gave evidence that the tenant said she could put plastic on the windows and he told her he would pay the cost of supplies if she did so. The landlord says he recently went to the rental unit to repair the door but the tenant would not let him do so.

Analysis

I find the tenants received the Notice on May 20, 2014. 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.

I accept the landlord's evidence that the tenant made a \$450.00 payment five days after receiving the Notice and a \$400.00 payment on May 30, 2014 but no other payments. The tenant did not apply for dispute resolution. Since the tenant did not pay the outstanding rent and utilities and did not apply for dispute resolution, 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 tenant. Should the tenant fail to comply with the order, it may be filed for enforcement in the Supreme Court.

I accept the landlord's evidence, which the tenant did not dispute, regarding the amount of outstanding rent and utilities. I find the landlord is entitled to recover the amount

claimed of \$1,280.13 for unpaid rent and utilities. The landlord is also entitled to recover his RTB filing fee of \$50.00.

The total amount due the landlord is \$1,330.13. I order that the landlord retain the security deposit of \$300.00 and the pet deposit of \$100.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$930.13. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession and a monetary order for \$930.13.

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: June 26, 2014

Residential Tenancy Branch

