



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, MNDC, FF
CNC

Introduction

This hearing was convened by way of conference call concerning an Application for Dispute Resolution (the “Application”) made by both the Landlords and the Tenants. One of the Landlords appeared for the hearing with an assistant and provided affirmed testimony during the hearing as well as written evidence in advance of the hearing.

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

The Landlord testified that he had served the Tenants with a copy of the Application and the Notice of Hearing documents personally and by registered mail to the Tenants’ rental unit address; the Landlord provided the Canada Post tracking numbers, which were noted in the file, as evidence for this method of service.

However, the Tenants failed to appear for the 18 minute duration of the hearing, despite the Tenants’ Application being scheduled to be heard on the same date and time as the Landlords’ Application. However, the Tenants did provide written evidence for this hearing which indicated that they were no longer disputing the notice to end tenancy for cause and for the unpaid rent and were making preparations to leave the rental suite. In this written evidence, the Tenants also confirmed receipt of the Notice of Hearing documents for this hearing.

Based on the above Tenants’ written evidence and the Landlord’s verbal testimony, I find that the Landlord served the required documents in accordance with Section 89(1) (c) of the Act.

I have carefully considered the Landlord's undisputed testimony and written evidence as well as the Tenants' written evidence as follows.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to a Monetary Order for unpaid rent for the months of May, June and July, 2014?
- Are the Landlords entitled to keep the Tenants' security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord confirmed the details on the written tenancy agreement that this one year fixed term tenancy started on March 1, 2014 and is due to end on February 28, 2015. Rent is payable by the Tenants in the amount of \$1,200.00 on the first day of each month. The Tenants paid a \$600.00 security deposit at the start of the tenancy which the Landlords still retain.

The Landlord testified that the Tenants failed to pay rent for the month of May, 2014. As a result, the Landlords personally served the Tenants with a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on May 14, 2014 and a 1 Month Notice to End Tenancy for repeatedly late rent payments.

The Notice was provided in written evidence and shows an effective vacancy date of May 25, 2014 due to \$800.00 that was due on May 1, 2014. The Landlord testified that this amount was further reduced after some deductions were made due to refrigerator repairs to \$570.00 which the Tenants failed to pay.

The Landlord testified that the Tenants have also failed to pay for June and July, 2014 rent in the amount of \$1,200.00 each.

The Tenants acknowledged in their written submissions that the above amounts totaling \$2,970.00 are indeed payable by them to the Landlord and that they will make payments arrangements with the Landlord after vacating the rental suite.

Analysis

Having examined the Notice served to the Tenants on May 14, 2014, I find that the contents complied with the requirements of Section 52 of the Act.

Based on the undisputed evidence presenting in this case, I accept that the Tenants were personally served with the Notice on May 14, 2014.

Sections 46(4) and (5) of the Act explain 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 effective date of the Notice.

While the Tenants did make an Application to dispute the Notice within the allowable time limits, the Tenant failed to appear for the hearing; however, they do explain in their written submissions that they do not dispute the Notice and are liable for the outstanding rent claimed by the Landlords in this case.

As a result, I accept the Landlord's testimony and written evidence that the Tenants have not paid rent for the months of May, June and July, 2014 in the amount of **\$2,970.00**. Therefore the Landlords are entitled to an Order of Possession and a Monetary Order for this amount.

As the Landlords have been successful in this matter, the Landlords are also entitled to recover from the Tenants the **\$50.00** filing fee for the cost of his Application, pursuant to Section 72(1) of the Act.

Therefore, the total amount payable by the Tenants to the Landlords is **\$3,020.00**.

As the Landlords already hold the Tenants' **\$600.00** security deposit, I order the Landlords 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 **\$2,420.00** in unpaid rent.

As the Landlords have been successful in obtaining an Order of Possession for unpaid rent, I did not hear or consider the evidence relating to the 1 Month Notice to End Tenancy for repeatedly late rent payments.

Conclusion

As the effective date of vacancy on the Notice has passed, I grant the Landlords an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Tenants and may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the Landlords a Monetary Order pursuant to Section 67 of the Act in the amount of **\$2,420.00**. 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.

As the Tenants failed to appear for the hearing to present the merits of their Application and the Landlords were issued with an Order of Possession, the Tenants' 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 *Residential Tenancy Act*.

Dated: July 14, 2014

Residential Tenancy Branch

