



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord and her father, acting as the Landlord's agent, appeared for the hearing and both provided affirmed testimony as well as written evidence prior to the hearing. There was no appearance by the Tenants during the 36 minute duration of the hearing and there was no submission of written evidence by the Tenants prior to the hearing. As a result, I focused my attention to the service of the documents by the Landlord.

The Landlord's agent testified that he had served both Tenants individually with a copy of the Application and the Notice of Hearing documents by registered mail on June 20, 2014, pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). Copies of the Canada Post tracking receipts were provided as evidence for this method of service. The Canada Post website indicates that the documents were received and signed for by the one of the Tenants on July 8, 2014. Based on the above evidence, I find that the Landlord served the Tenants with the documents in accordance with the Act.

At the start of the hearing, the Landlord confirmed that she held a security deposit from the Tenants but was not sure whether this could be dealt with during this hearing. The Landlord indicated that her objective in the hearing was to seek an Order of Possession and that she was not monetarily motivated. As a result, the Landlord requested that she only seeks to retain the Tenants' security deposit in full satisfaction of the unpaid rent. Therefore, I amended the Landlord's Application to include the request to retain the Tenants' security deposit, pursuant to Section 64(3) (c) of the Act.

The hearing continued and the Landlord and her agent presented undisputed testimony and evidence as follows.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to keep the Tenants' security deposit in the amount of \$500.00 in full satisfaction of unpaid rent in the amount of \$650.00?

Background and Evidence

The Landlord testified that this tenancy started on June 1, 2012 on a month to month basis after the Tenants paid \$500.00 as a security deposit; no written tenancy agreement was completed at this point. However, a signed written tenancy agreement was completed in April, 2014 and provided as evidence. Rent under the agreement is payable by the Tenants in the amount of \$800.00 on the first day of each month.

The Landlord's agent testified that the Tenants had failed to pay rent for May and June, 2014 in the amount of \$1,600.00. The Landlord testified that the Tenants had habitually paid rent late throughout the tenancy and as a result sought to end the tenancy through a formal notice.

Therefore, the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on June 3, 2014 by registered mail; the Landlord's agent provided a copy of the Canada Post tracking receipt as evidence for this method of service as well as a signed Proof of Service document.

The Notice was also provided in written evidence and shows an expected date of vacancy of June 19, 2014. The Landlord's agent testified that the Notice was served to the Tenant for \$1,600.00 due on June 1, 2014.

The Landlord's agent testified that the Tenants paid \$950.00 towards the outstanding amount of \$1,600.00 on June 14, 2014 leaving an outstanding balance of \$650.00 which the Tenants still have not paid. The Landlord's agent documented this on the Notice provided as evidence.

Analysis

Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act. I also accept the verbal and written evidence of the Landlord that the Notice was served to the Tenants by registered mail in accordance with Section 88(c) of the Act.

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 must vacate the rental unit in accordance with the vacancy date of the Notice.

I accept the Landlord's evidence that the Tenants failed to dispute the Notice or pay the full amount of rent due on the Notice. As a result, I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the vacancy date of the Notice. Therefore, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant as the vacancy date on the Notice has now passed.

Based on the written and verbal evidence of the Landlord, and in the absence of any evidence from the Tenants to dispute this, I find that the Landlord is also entitled to unpaid rent in the amount claimed in the Application of **\$650.00**.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court.

As the Landlord only elected to retain the Tenants' security deposit in **full** satisfaction of the award for unpaid rent, I authorize the Landlord to keep the entire Tenants' security deposit of **\$500.00** in full satisfaction of the Landlord's monetary claim.

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: August 15, 2014

Residential Tenancy Branch

