



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

On July 23, 2014 the Landlord made an Application for Dispute Resolution (the “Application”) through the Direct Request Proceedings requesting an Order of Possession and a Monetary Order for unpaid rent. This process involves a non-participatory hearing based on an undisputed 10 Day Notice to End Tenancy for Unpaid rent or Utilities (the “Notice”), pursuant to Section 55(4) of the Act.

However, the written evidence provided by the Landlord for this non participatory hearing was not sufficient for me to make a finding on the Landlord’s Application without hearing from the parties. The parties were issued with an Interim decision on July 23, 2014 and this should be read in conjunction with this decision. As a result, the proceedings were adjourned to reconvene for this participatory hearing.

The Landlord and one of the Tenants appeared for the hearing and provided affirmed testimony. The Landlord’s written evidence for the non-participatory hearing was also considered in this decision.

Since the Landlord was limited in the issues to be decided upon for the original non participatory hearing which was subsequently adjourned to a participatory hearing, I amended the Landlord’s Application to include a request for the Landlord to keep the Tenant’s security deposit, for unpaid rent relating to the months of August, September and October, 2014 and recovery of the filing fee. This amendment was made under the authority afforded to me by Section 64(3) (c) of the Act.

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 the Tenants’ security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

Both parties agreed that this tenancy started on July 1, 2014 for a fixed length of time of one year. The Landlord testified that the tenancy agreement was signed on June 27, 2014 and not July, 27 as noted on the written tenancy agreement.

The Tenants only paid a \$1,000.00 security deposit at the start of the tenancy, even though a larger amount was required. Rent under the tenancy agreement was established in the amount of \$3,100.00 payable by the Tenants on the first day of each month.

The Landlord testified that on July 1, 2014, the Tenants failed to pay rent. As a result, the Landlord served the Tenants with a two page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), on July 6, 2014 by attaching it to the Tenants' door with a witness. The Notice was provided as evidence and shows an expected date of vacancy of July 17, 2014 due to \$3,100.00 in unpaid rent due on July 1, 2014.

The Landlord testified that the Tenants failed to pay for August, 2014 rent but did pay \$500.00 in August, 2014 towards the rental arrears. However, the Tenants failed to pay rent for September and October, 2014. The total amount of rent arrears is **\$11,900.00** (2,600 + (3,100 x 3)).

The Tenant did not dispute the rental arrears but was hoping to work with the Landlord on a payment plan. The Landlord did not feel confident that the Tenants could make such a large payment in a short period of time in addition to his continuing rent payments if the tenancy were to continue.

The Tenant did submit that he was relying on others to pay their portion of the rent and was under the impression that he did not have to pay rent until a determination had been made on the Landlord's Application.

Analysis

Having examined the Notice, I find that the contents on the approved form complied with the requirements of the Act. Section 46(4) and (5) of the Act states that within five days of a Tenant receiving a Notice, the 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.

The Tenant confirmed receipt of the Notice. However, the Tenants failed to dispute the Notice and failed to pay the full amount of rent due on July 1, 2014 within five days of receiving the Notice.

As a result, I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and therefore, the Landlord is entitled to an Order of Possession.

I also grant the Landlord a Monetary Order for undisputed rental arrears in the amount of **\$11,900.00**.

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 this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is \$11,950.00.

As the Landlord already holds the Tenants' **\$1,000.00** 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 Landlord is awarded **\$10,950.00** for unpaid rent.

Conclusion

As the effective date on the Notice has passed, I grant the Landlord an Order of Possession effective **2 days after service on the Tenants** for the above reasons. 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 suite.

I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$10,950.00**. 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.

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: October 6, 2014

Residential Tenancy Branch

