



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for an order of possession, for a monetary order for unpaid rent and utilities, to keep all or part of the security deposit and an order to recover the cost of filing the application from the tenants.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary matter

At the outset of the hearing, counsel for the landlord requested to amend the landlords' application to include subsequent rent that has not been paid by the tenants, since filing their application.

I have allowed the landlords' application to be amended to include any subsequent rent not paid by the tenants, as the tenants should have known rent was payable under the terms of their tenancy agreement.

Issues to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent and utilities?

Are the landlords entitled to keep all or part of the security deposit?

Are the landlords entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on December 1, 2012. Rent in the amount of \$1,400.00 was payable on the first of each month. A security deposit of \$700.00 was paid by the tenants.

The parties agreed rent was not paid for August 2014, as this was the tenants compensation for receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "notice"), issued on June 24, 2014, with an effective vacancy date of August 31, 2014. Filed in evidence is a copy of the notice.

The landlords claim as follows:

a.	Order of possession	
b.	Unpaid utilities	\$ 672.98
c.	Unpaid rent for September and October 2014	\$2,800.00
d.	Filing fee	\$ 50.00
	Total claimed	\$3,522.98

Order of possession

Counsel for the landlords submits that the tenants have not vacated the rental premises as required by the notice to end tenancy and the landlord seeks an order of possession.

The tenant AM acknowledged that they received the notice to end tenancy. They did not dispute the notice and have not moved-out as they were having difficulties finding new rental accommodation; however, they are currently in the process of packing their belongings.

Unpaid utilities

The landlord MP testified that the tenants have not paid their portion of the hydro and water utilities. The landlord stated that as of August 20, 2014, the amount of \$514.07 is owed for hydro. The landlord stated that as of August 31, 2014, the amount of \$58.91 is owed for water. The landlord stated that the tenant EP, in an email dated August 23, 2014 states that she expects the amount owing for utilities will exceed the amount of their \$700.00 security deposit. Filed in evidence is a copy of the email dated August 23, 2014.

The tenant AM agreed that they owe the landlord for outstanding hydro and water utilities.

Unpaid rent for September and October 2014

The landlord MP testified that the tenant has not paid any rent for September and October 2014.

The tenant AM acknowledged that they did not pay rent to the landlords for September and October 2014.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Order of possession

In this case, the tenants acknowledged that they received the notice to end tenancy. The tenants did not apply to dispute the notice and are therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the notice, which was August 31, 2014.

I find that the landlords are entitled to an order of possession effective no later than **two (2) days** after service of this order upon the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

Unpaid utilities

In this case, the tenants agreed that they owed outstanding utilities to the landlords. Therefore, I find the landlords are entitled to recover unpaid utilities in the amount of **\$672.98**.

Unpaid rent for September and October 2014

In this case, the tenancy legally ended on the effective vacancy date stated in the notice. The tenants failed to comply with the notice as they did not vacate the rental premises and were overholding the premises for the months of September and October 2014. I find the tenants have breached the Act, when they failed to vacate the rental premises on the effective vacancy date stated in the notice and as a result, the landlord

suffered losses. Therefore, I find the landlords are entitled to recover occupancy rent for September and October 2014, in the amount of **\$2,800.00**.

I find that the landlords have established a total monetary claim of **\$3,522.98** comprised of the above amounts and the fee paid by the landlords for this application.

I order that the landlords retain the security deposit of **\$700.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$2,822.98**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants failed to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy. The landlords are granted an order of possession.

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: October 22, 2014

Residential Tenancy Branch

