



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 the landlord's application for an Order of Possession for unpaid rent and for a Monetary Order for unpaid rent. This hearing was originally heard as a Direct Request Proceeding but could not proceed due to factors associated to the landlord's documentary evidence. The matter was adjourned and reconvened for a participatory hearing held today.

Service of the original hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on September 17, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*. The landlord served the tenants with the Reconvened Notice of hearing and the amended application, in person on October 04, 2014.

The male tenant and landlords attended the conference call hearing and gave sworn testimony. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlord SS testifies that this 12 month fixed term tenancy started on April 01, 2014 and is now a month to month tenancy. Rent for this unit is \$925.00 which is due byweekly starting on April 04, 2014.

The landlord SS testifies that the tenants owe \$3,400.00 in unpaid rent. The tenants missed a rent payment on June 27 of \$925.00 and on July 11 of \$925.00. Julys rent was paid; however, two payments were missed on August 12 and August 22 of \$1,850.00. One payment was made on September 05 and a payment was missed on September 19. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent on September 01, 2014. This was served by posting it to the tenants' door on this date. This Notice states that the tenants owe rent of \$2,450.00 that was due on August 08, 2014. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on September 11, 2014. The tenants did not pay the outstanding rent or dispute the Notice within five days. The landlords seek a Monetary Order for \$3,400.00.

The landlord has also applied for an Order of Possession to take effect within two days of service.

The tenant attending does not dispute that they owe \$3,400.00 to the landlords. The tenant explained that he had fallen behind with the rent when he became ill and was hospitalized.

Analysis

Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Consequently, I am satisfied with the undisputed evidence before me that the tenants have failed to pay rent of **\$3,400.00**. The landlord is entitled to recover these rent arrears had have been issued with a Monetary Order for this amount pursuant to s.67 of the *Act*.

I have reviewed all documentary evidence and accept that the tenants have been served with Notice to End Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenants on September 04, 2014; the effective date of the Notice is therefore amended to September 14, 2014. The Notice states that the tenants have five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor did they apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective two days after service upon the tenants pursuant to section 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,400.00**. The Order must be served on the Respondents and is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenants. This Order must be served on the Respondents and may be filed in the Supreme Court 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 *Residential Tenancy Act*.

Dated: November 12, 2014

Residential Tenancy Branch

