



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAMARGUE INV
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although the hearing lasted approximately 40 minutes in length. The landlords' female agent, representing the landlord company as well as the landlords' male agent (together "landlords"), attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to call witnesses and to make submissions.

The landlords' female agent gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent, dated October 2, 2014 ("10 Day Notice"), was posted to the door where the tenant was residing in the rental unit, on October 2, 2014 at 12:00 p.m. The landlords' female agent has attached a proof of service with a witness signature in her Application. The landlords' male agent witnessed the service and testified that the documents were served as per the above. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on October 5, 2014, the third day after its posting.

The landlords originally sought an order of possession for unpaid rent and to end the tenancy early and obtain an order of possession. The amended application was made on October 15, 2014, the same date as the original application, and the landlords' female agent confirmed that she corrected her application to seek an order of possession for unpaid rent, a monetary order for unpaid rent, a monetary order to keep all of part of the tenant's security deposit and to recover the filing fee from the tenant.

The landlords' female agent testified that she served the tenant with the amended Application for Dispute Resolution hearing notice on October 15, 2014 by handing it personally to the tenant

at the landlords' office. The landlords' male agent witnessed the service and testified that the documents were served as per the above. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application on October 15, 2014.

The landlords' female agent testified that she served the tenant with the Application for Dispute Resolution hearing evidence on October 22, 2014, by handing it personally to the tenant at the landlords' office. The landlords' male agent witnessed the service and testified that the documents were served as per the above. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application on October 15, 2014.

The landlords' female agent testified that she was no longer seeking an Order of Possession, as the tenant vacated the rental unit on October 26, 2014. Consequently, the landlords' application for an Order of Possession is withdrawn.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent arising out of this tenancy?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

In their Application, the landlords provided a copy of the tenancy agreement, which was for a month-to-month tenancy, beginning on October 1, 2013. Monthly rent was payable in the amount of \$750.00 on the first day of each month. A security deposit in the amount of \$375.00 was paid by the tenant to the landlords on September 10, 2013. Although the tenancy agreement did not have the tenant's rental unit address on it, the landlords' female agent confirmed the rental unit address in her oral testimony, which was included on the Application for Dispute Resolution and the 10 Day Notice, and acknowledged that she mistakenly omitted this address when drafting the tenancy agreement. The tenancy agreement was signed by the tenant and landlords on October 1, 2014.

The landlords are seeking \$1,221.42 in unpaid rent due on October 1, 2014, as per the 10 Day Notice. The landlords' female agent testified that the tenant made a partial payment of \$278.58 for rent on September 4, 2014, to the landlords. She testified that a receipt was issued for the above payment, which was made in cash, and confirmed that no further payments have been made by the tenant. The landlords' female agent requested outstanding rent owing by the tenant from September 2014, totalling \$471.42. The landlords' female agent testified that no rent was paid for October 2014, and requested the outstanding amount of \$750.00.

The landlords' female agent testified that the tenant vacated the rental unit on October 26, 2014, advising her that she would return the next day to clean the rental unit. The tenant did not appear again at the rental unit and the landlords have no forwarding address for the tenant.

The landlords' female agent testified that she was seeking to apply the tenant's security deposit towards the repairs for damage to the rental unit. As the landlords had not applied for a monetary award for damage, I advised the landlords' female agent that this matter was not properly before me and I could not consider her request as part of the landlords' current application.

The landlords also applied to recover the filing fee of \$50.00 for this application from the tenant.

Analysis

The tenant failed to pay the full rent for October 2014 within five days of being deemed to have received the 10 Day Notice. Although a partial payment was made by the tenant on September 4, 2014, the full amount of rent for September and October 2014 remained unpaid as of October 15, 2014, which was the deadline after which the tenant was deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice.

The landlords seek unpaid rent for September 2014, in the amount of \$471.42, after taking into account the partial payment made by the tenant on September 4, 2014 in the amount of \$278.58. The landlords further seek unpaid rent in the amount of \$750.00 for unpaid rent for October 2014. In total, the landlords seek unpaid rent for September and October 2014 in the amount of \$1,221.42. The tenant had notice of this unpaid rent by way of the 10 Day Notice and the landlords' application for dispute resolution. I find that the landlords are entitled to this unpaid rent and award them \$1,221.42 in unpaid rent arrears for September and October 2014.

The landlords' female agent testified that she continues to hold the tenant's security deposit of \$375.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenant's security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$896.42 against the tenant as follows:

Item	Amount
September 2014 rent	\$750.00
Less Partial Payment on September 4, 2014	-278.58
October 2014 rent	750.00
Less Security Deposit	-375.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$896.42

The landlords are provided with a monetary order in the amount of \$896.42 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlords' application for an order of possession was withdrawn at the hearing.

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 04, 2014

Residential Tenancy Branch

