



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, the landlord's agent provided sworn testimony that the tenants were served in person on October 04, 2014.

The landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants. All of the testimony and documentary evidence was carefully considered.

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's agent testified that this month to month tenancy started in approximately April 01, 2008 and a written tenancy agreement was signed by the party's on August 01, 2012. Rent for this unit is \$800.00 per month and is due on the 1st of each month.

The landlord's agent testified that the tenants failed to pay the rent due for August, September and October, 2014, leaving an unpaid balance of \$2,400.00. The landlord issued a 10 Day Notice to End Tenancy (the Notice) for unpaid rent on September 09, 2014. This was served in person to the tenants on that date. The Notice stated that the tenants owed rent of \$800.00 which was due on September 01, 2014. The landlord's agent testified that he omitted to include August's rent on that Notice. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on September 19, 2014. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants have failed to pay rent for November, 2014 and the landlord seeks to amend the application to include the unpaid rent for November, 2014..

The landlord requested an Order of Possession to take effect as soon as possible; a Monetary Order to recover the unpaid rent of \$3,200.00 and the filing fee of \$50.00.

Analysis

Section 26 of the *Residential Tenancy Act (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, as the tenants have failed to attend the hearing to dispute the landlord's claim I find from the documentary evidence and testimony of the landlord's agent that the tenant has failed to pay rent for August, September, October and November, 2014, and the landlord is entitled to recover these rent arrears. Consequently, the landlord will receive a Monetary Order to the sum of **\$3,200.00** pursuant to s. 67 of the *Act*.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice stated that the tenants had 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 apply to dispute the Notice 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 and grant the landlord an Order of Possession pursuant to s. 55 of the *Act*.

The landlord is entitled to recover the **\$50.00** filing fee from the tenants, pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,250.00** comprised of unpaid rent and the filing fee. The Order must be served on the Respondents. If the Respondents fail to comply with the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service upon the Respondents. This Order must be served on the Respondents. If the Respondents fail to comply with this Order, the Order 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 18, 2014

Residential Tenancy Branch

