



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENDALL PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 14, 2014, Canada post tracking numbers were provided as evidence of service. The tracking record history shows the items were successfully delivered to the recipients on October 15, 2014. I find that the tenants have been duly served in accordance with the Act.

The landlord's agent appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Preliminary matters

At the outset of the hearing the landlord's agent requested to amend their application to include unpaid rent for November 2014.

In this case, the landlord's application is seeking compensation for unpaid rent. Since filing their application for dispute resolution a further month of rent is now due. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlord's application is amended to include the subsequent rent due for November 2014.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

Based on the testimony of the landlord's agent, I find that the tenants were served with a notice to end tenancy for non-payment of rent on September 5, 2014, by posting to the door, which was witnessed. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

The landlord's agent testified that the tenants did not pay all rent owed for September 2014, within five days of receiving the notice and did not dispute the notice. The landlord's agent stated that on September 29, 2014, the tenants made a partial payment of rent in the amount of \$500.00 leaving a balance due of \$850.00. The agents stated the tenants have not paid any rent for October 2014 and November 2014. The landlord seeks to recover unpaid rent in the amount of \$3,350.00.

The landlord's agent testified that they seek to recover late fees as permitted by clause 5(e) of the tenancy agreement. The agent stated that the tenants are late paying for the above mentioned three months and August 2014 rent was paid on August 12, 2014. The landlord seeks to recover \$25.00 for each month rent was late in the amount of \$100.00. Filed in evidence is a copy of the tenancy agreement which support a fee for late payments of rent.

Analysis

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

The tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of **\$3,500.00** comprised of unpaid rent for the above mentioned months, late fees and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$625.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,875.00.**

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

Conclusion

The tenants failed to pay rent and did not file 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 landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary 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: November 24, 2014

Residential Tenancy Branch

