



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlords attended the hearing and gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution, notice of the hearing and evidentiary material by registered mail on September 26, 2014, no one for the tenants attended the call. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlords' agent. The landlord's agent testified that the documents were served on that date and in that manner and that the tenants refused to pick up the registered mail package. A copy of the envelope showing that it was sent by registered mail and "Unclaimed" at the postal outlet has been provided.

The *Residential Tenancy Act* requires a party who makes a monetary claim against parties to serve each respondent individually. I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act* but only in respect of the applications of the landlord that do not claim monetary compensation. That portion of the landlords' application is hereby dismissed with leave to reapply.

Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on July 15, 2014 and the tenants still reside in the rental unit. Rent in the amount of \$900.00 per month is payable in advance on the first day of each month. The landlords have collected a security deposit from the tenants in the amount of \$450.00 which is still held in trust by the landlords.

The landlord's agent further testified that when the tenants first moved in, they paid the landlords by way of cheque the amount of \$900.00 which was to cover the last half of rent for July, 2014 and the security deposit. The tenants also paid rent for the month of August, 2014 by way of cheque and both cheques were returned to the landlords showing that they had been written on a closed account. Believing that it was a bank error, one of the landlords showed the returned item documents to the tenants, and the tenants said they would look into it and didn't return the documents. The landlord's agent testified that the bank charged the landlords \$25.00 for each item returned, but no evidentiary material has been provided.

The landlord's agent served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing it to one of the tenants on August 25, 2014. A copy of the notice has been provided and it is dated August 25, 2014 and contains an expected date of vacancy of September 4, 2014. The notice states that the tenants failed to pay rent that was due on July 15 and August 1, 2014.

On September 4, 2014 the tenants paid the landlords \$900.00 in cash, which the landlords have applied to the returned cheque for July's rent and the security deposit. No rent has been received by the landlords since and rent remains outstanding for August, September, October, and November, 2014.

The tenants have not served the landlords with an Application for Dispute Resolution disputing the notice to end tenancy, and the landlords claim an Order of Possession.

Analysis

The *Residential Tenancy Act* states that where a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and, which must be no less than 10 days after service, and must move out. In this case, I am satisfied that the tenants have been served with the notice, did not pay the rent and have not

disputed the notice. Therefore, I find that the landlords are entitled to an Order of Possession on 2 days notice to the tenants.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenants.

I hereby grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00 as recovery of the filing fee for the cost of the application.

The balance of the landlords' application is hereby dismissed with leave to reapply.

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 10, 2014

Residential Tenancy Branch

