



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY PROPERTY MANAGEMENT DIVISION
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 based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified she served the Tenants with the Notice of Hearing and their Application on November 21, 2014 by registered mail. Under the Act documents served this way are deemed served 5 days later; accordingly, I find the Tenants were duly served as of November 26, 2014.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated the tenancy began August 2014 and monthly rent was payable in the amount of

\$720.00. The agreement references a security deposit in the amount of half a month's rent but there is no indication this was paid

The Tenants failed to pay rent for the month of September 2014 and had an outstanding balance for previous months. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on September 16, 2014 indicating \$1,460.00 was due as of September 1, 2014 (the "Notice"). The Landlord testified that the Tenants were served with the Notice on September 16, 2014 by posting to the rental unit door. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenants were served with the Notice as of September 19, 2014.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, September 24, 2014. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

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.

Under section 26 of the Act, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent. In this situation the Tenants had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenants. 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 \$3,295.00 comprised of \$1,460.00 owing as of September 1, 2014, and rent for October, November and December in the amount of \$720.00 per month and the \$50.00 fee paid by the Landlord for this application.

As I am unable to determine if a security deposit was paid, I dismiss the Landlord's request to retain the security deposit with leave to reapply.

I grant the Landlord an order under section 67 for the balance due of \$3,295.00.

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, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: December 18, 2014

Residential Tenancy Branch

