



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee. The Landlord also applied for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement.

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. There was no appearance for the Tenants during the ten minute duration of the hearing. As a result, I turned my mind to the service of the documents to the Tenants for this hearing.

The Landlord's agent testified that she served each Tenant with a copy of the Application and the Notice of Hearing documents by registered mail on February 21, 2015, pursuant to Section 89(1) (c) of the Act. The Landlord provided the Canada Post tracking numbers as evidence to verify this method of service.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find that the Tenants were deemed served with the required documents on February 26, 2015 pursuant to the Act.

Preliminary Issue

At the conclusion of the hearing, the Landlord indicated that she wanted to keep the Tenants' security deposit in partial satisfaction of the monetary claim but had not elected to claim for this on the Application in error.

As a result, pursuant to my authority under Section 64(3) (c) of the Act, I amended the Landlord's Application to include the request to keep the Tenants' security deposit.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent for February and March 2015 and two late rent fees?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord's agent testified that this tenancy started on May 1, 2014 for a fixed term which ended on October 31, 2014. After this time the tenancy continued on a month to month basis. The parties completed a written tenancy agreement which states that rent is payable by the Tenants in the amount of \$840.00 on the first day of each month. The Landlord's agent testified that the Tenants paid a \$420.00 security deposit at the start of the tenancy which the Landlord still retains.

The Landlord's agent testified that the Tenants failed to pay rent on February 1, 2015. As a result, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on February 2, 2015 by attaching it to the Tenants' door with a witness. The Landlord provided a Proof of Service document signed by a witness who verified this method of service. The Notice was provided into written evidence and shows an expected date of vacancy of February 15, 2015 due to \$840.00 in unpaid rent due on February 1, 2015.

The Landlord's agent testified that the Tenants made a partial payment of \$300.00 towards the February 2015 arrears, leaving a balance of \$540.00. As full rent for February 2015 had not been paid by the Tenants, the Landlord still looks to move forward with the ending of the tenancy.

The Landlord's agent testified that the Tenants have also failed to pay March 2015 rent. As a result, the Landlord now seeks a Monetary Order for unpaid rent in the amount of \$1,380.00. The Landlord's agent also drew my attention to section 3(a) of the signed written tenancy agreement sub-titled 'Rent'. This requires the Tenants to pay a late rent fee in the amount of \$20.00. As a result, the Landlord seeks to recover the two late rent fees for February and March 2015 in the amount of \$20.00 each.

Analysis

I have carefully considered the undisputed affirmed testimony and the documentary evidence of the Landlord in this decision as follows.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the Notice was served to the Tenants by attaching it to their door on February 2, 2015, in the presence of a witness.

Section 90(c) of the Act provides that a document served by attaching to the door is deemed to have been received three days after being attached. Therefore, I find that the Tenants are deemed to have received the Notice on February 5, 2015.

Therefore, under the provisions of the Notice and the Act, the Tenants had until February 10, 2015 to pay the outstanding rent on the Notice or make an Application to dispute the Notice. However, the Tenants did not make an Application and did not pay full rent within the five time limit allowed under the Act.

As a result, I find that the Tenants are conclusively presumed to have accepted that the tenancy ended on the vacancy date of the Notice. As the vacancy date on the Notice has now passed, the Landlord is issued with an Order of Possession which is effective two days after service on the Tenants. I find the Landlord is also entitled to **\$1,380.00** in rental arrears.

Section 7(d) of the *Residential Tenancy Regulation* allows a Landlord to charge a fee of no more than \$25.00 for late payment of rent which is documented in a tenancy agreement. The Landlord provided a signed tenancy agreement which requires the Tenants to pay a \$20.00 late rent fee. Therefore, I find the Landlord is also entitled to the late rent fees for February and March 2015 for a total amount of **\$40.00**.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$1,470.00** (\$1,380.00 + \$40.00 + \$50.00).

As the Landlord already holds the Tenants' \$420.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded the outstanding balance of the rental arrears in the amount of **\$1,050.00** (\$1,470.00 - \$420.00).

Conclusion

The Tenants have breached the Act by failing to pay rent under the tenancy agreement.

As a result, the Landlord is granted an Order of Possession effective **two days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court.

The Landlord is allowed to keep the Tenants' security deposit. As a result, the Landlord is granted a Monetary Order for the remaining rental arrears in the amount **\$1,050.00**, pursuant to Section 67 of the Act. This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

Copies of both orders for service and enforcement are attached to the Landlord's copy of this decision.

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: March 19, 2015

Residential Tenancy Branch

