



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNDC, MNSD, FF

Introduction

This is an application filed by the landlords for an order of possession as a result of a notice to end tenancy issued for unpaid rent or utilities and that the tenants have breached an agreement with the landlords. The landlords also seek a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

The male landlord attended the hearing by conference call and gave undisputed testimony. The tenants did not attend or submit any documentary evidence. The landlord testified that both tenants were served with the notice of hearing package in person on February 19, 2015. The landlord stated that a photograph was taken, but not submitted in evidence as proof of service.

At the outset, the landlord stated that the tenants had vacated the rental unit on March 1, 2015 without any notice and that an order of possession was no longer required as the landlord now has possession of the rental. As such, no further action is required for this portion of the landlord's application as order of possession was withdrawn by the landlord at the hearing.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?
Are the landlords entitled to a monetary order for unpaid rent?
Are the landlords entitled to retain the security deposit to offset his claim?

Background and Evidence

This tenancy began on November 1, 2014 on a fixed term tenancy ending on November 1, 2015 and then thereafter on a month-to-month basis as shown by the submitted copy

of the signed tenancy agreement dated October 26, 2014. The monthly rent was \$1,850.00 and a security deposit of \$925.00 was paid on November 1, 2014.

The landlord seeks a monetary order for \$5,500.00 in unpaid rent and to retain the \$925.00 security deposit to offset this claim. This claim consists of unpaid monthly rent of \$1,850.00 for 3 months for December 2014, January 2015 and February 2015, totalling \$5,500.00.

The landlord testified that the tenants were served with a 10 day notice to end tenancy issued for unpaid rent dated February 11, 2015. The landlord stated in his direct testimony that the notice was served in person on February 11, 2015 and that a photograph was taken of the service, but not submitted in evidence for the hearing.

The notice identified an effective end of tenancy date of February 21, 2015 and stated that the tenant failed to pay rent of \$3,700.00 that was due on January 15, 2015. The landlord clarified that when this notice was served, the tenant had failed to pay rent of \$1,850.00 for December 2014 and \$1,850.00 for January 2015. The landlord said that the tenant vacated the rental unit on March 1, 2015 without notice and without paying any rent since the notice dated February 11, 2015 was issued.

Analysis

Section 46 of the Residential Tenancy Act speaks to the landlord serving a notice to end tenancy issued for unpaid rent. A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find based upon the undisputed evidence of the landlord that the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice dated February 11, 2015. The tenant has not made an application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days is presumed to have accepted that the tenancy ended on the effective date of the notice. In this case, this required the tenant to vacate the premises by February 21, 2015. The tenant failed to comply with this notice, but did vacate the rental unit on March 1, 2015. As the landlord has clarified the request for an order of possession is withdrawn and no further action is required for this portion of the application.

The landlord has provided undisputed testimony that the tenant's failed to pay rent for December 2014, January 2015 and February 2015 at \$1,850.00 per month, totalling,

\$5,550.00. I find that the landlords have established a claim for unpaid rent based upon the landlord's undisputed direct testimony and the submitted documentary evidence for the 3 months totalling, \$5,550.00.

The landlords are also entitled to recovery of the \$100.00 filing fee. I order that the landlords retain the \$925.00 security deposit in partial satisfaction of the claim. No interest is payable on this deposit. I grant the landlords a monetary order under section 67 for the balance due of \$4,675.00.

Conclusion

The landlords' application for an order of possession based on the notice to end tenancy is withdrawn.

I order the landlord to retain the \$925.00 security deposit for this tenancy. The landlords are also granted a monetary order for \$4,675.00. The landlords are provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 23, 2015

Residential Tenancy Branch

