



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlords to keep all or part of the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. During the hearing the landlords testified that there are no monetary amounts now outstanding for rent as this was paid last week by one of the tenant's mother. The landlords withdraw their application for a Monetary Order for unpaid rent, to keep the security deposit and for money owed or compensation for damage or loss.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, served by registered mail on February 23, 2015. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues to be decided

- Are the landlords entitled to an Order of Possession due to unpaid rent?

Background and Evidence

The landlords testified that this month to month tenancy started on August 24, 2012. Rent for this unit is \$850.00 per month and is due on the 1st of each month. The tenants paid a security deposit of \$425.00 at the start of the tenancy.

The landlords testified that the tenants failed to pay rent for January, 2015 of \$850.00. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent on January 23, 2015. This was posted to the tenants' door. The landlord has provided a proof of service document in evidence. The Notice states that the tenants owe rent of \$850.00 which was due on January 01, 2015. The Notice informed the tenants that they tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on February 01, 2015. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants also failed to pay rent for February and March on the day rent was due. However, one of the tenants' mothers has since paid all the outstanding rent last week. The landlords testified that they accepted this payment and informed the tenants that the rent was accepted for use and occupancy only and the tenant was not reinstated.

The landlords therefore seek an Order of Possession effective on March 31, 2015. The landlords also requests to recover the \$50.00 filing fee from the tenants.

Analysis

Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I have reviewed all documentary evidence and accept that the tenants have been served with Notice to End Tenancy as declared by the landlords. The Notice is deemed to have been received by the tenants on January 26, 2015 three days after it was posted to the door pursuant to s. 90 of the *Act*. The tenants had until January 31, 2015 to pay the outstanding rent for January, 2015. I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. As the Notice was not deemed to have been served until January 26, 2015, the effective date of the Notice is amended to February 05, 2015 pursuant to s. 53 of the *Act*. As this date has since passed I find the landlords are entitled to an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

I find that the landlords are entitled to an Order of Possession, effective **on March 31, 2015**. This Order must be served on the tenants and may be filed in the Supreme Court and enforced as an Order of that Court.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. I Order that the landlords retain this amount from the security deposit of \$425.00 leaving a

balance of \$375.00 which must be returned to the tenants or otherwise dealt with in compliance with section 38 of the *Act*.

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

