



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord 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 landlord company attended the hearing with a witness and each gave affirmed testimony. However, despite being individually served with the Landlord's Application for Dispute Resolution and notice of this hearing on March 26, 2015 by registered mail, no one for the tenants attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the landlord's agent and witness. The landlord's agent testified that the tenants were served on that date and in that manner and has provided 2 Canada Post cash register receipts bearing that date as well as 2 Registered Domestic Customer Receipts stamped by Canada Post and addressed to each of the tenants and I am satisfied that both of the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that he is currently the resident manager of the rental unit and has been so employed for a few months. Records indicate that this month-to-month tenancy began on January 18, 2010 and the tenants still reside in the rental unit. Rent in the amount of \$623.00 per month was payable on the 1st day of each month, however it was raised recently. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$300.00 and no pet damage deposit was collected.

The landlord's agent also testified that the tenants are currently in arrears of rent the sum of \$2,623.16, being unpaid rent from January, 2015 through April, 2015 and the landlord's agents issued a notice to end the tenancy to the tenants. The landlord's agent has not been served with an application for dispute resolution by the tenant disputing the notice.

The landlord's witness testified that he is the regional manager for the landlord company and is aware of the facts pertaining to this tenancy. There is no written tenancy agreement, however rent was \$623.00 per month and was raised by \$15.58 per month to \$638.58 effective March 1, 2015. A copy of a Notice of Rent Increase has been provided.

The landlord had applied for an Order of Possession and a monetary order for unpaid rent by way of the Direct Request Process, however the application was adjourned to a participatory hearing because the landlord did not have a written tenancy agreement. The parties received notice of the hearing, which took place on February 17, 2015. The tenants and the former resident manager of the landlord attended the hearing. The landlord's application for an Order of Possession was denied, however the Arbitrator made a monetary order in favour of the landlord in the amount of \$1,296.00 for unpaid rent for January and February, 2015 and ordered the landlord to keep \$50.00 of the security deposit as recovery of the filing fee for that application.

The tenants have not paid any portion of the monetary order and have not paid any rent since, and now arrears have accumulated from \$1,296.00 by an additional \$1,277.16 to \$2,573.16.

The tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 10, 2015. Another agent of the landlord served the notice that day by posting it to the door of the rental unit, and has provided a Proof of Service document signed by an agent of the landlord. A copy of the notice has also been provided and it is dated March 10, 2015 and contains an effective date of vacancy of March 20, 2015 for unpaid rent in the amount of \$1,869.00 that was due on March 1, 2015.

The landlord has not been served with an application for dispute resolution by the tenants disputing the notice and the landlord claims an Order of Possession, a monetary order for the unpaid rent and recovery of the \$50.00 filing fee, and an order permitting the landlord to keep the remaining \$250.00 of the security deposit.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant must pay the rent in full or dispute the notice within 5 days. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date of vacancy contained in the notice, which must be no less than 10 days after service or deemed service. I have read the Proof of Service document provided by the landlord's agents and I have reviewed the notice. I find that the notice is in the approved form and contains information required by the *Act*, and I am satisfied that the tenants were deemed served with the notice 3 days after it was posted, or March 13, 2015. The tenants did not pay the rent or dispute the notice by March 18, 2015, being 5 days after deemed service, and did not move out of the rental unit by March 28, 2015, and therefore I find that the landlord is entitled to an Order of Possession on 2 days notice to the tenants.

With respect to the monetary claim, the landlord already has a monetary order covering the unpaid rent for January and February, 2015 and I have no reason to believe that it isn't enforceable. I find, however, having received a copy of the Notice of Rent Increase and having heard the affirmed testimony of the landlord's witness, that the landlord has established a monetary claim for unpaid rent for March and April, 2015 in the amount of \$638.58 each month, or \$1,277.16.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

I hereby order the landlord to keep the remaining \$250.00 of the security deposit in partial satisfaction of the claim and I grant the landlord a monetary order for the

difference in the amount of \$1,077.16. The landlord is at liberty to enforce this order as well as the order made on February 17, 2015, unless otherwise prohibited.

Conclusion

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

I further order the landlord to keep the remaining \$250.00 of the security deposit and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,077.16.

These orders are final and binding and may be enforced.

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: April 30, 2015

Residential Tenancy Branch

