



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNSD, FF
CNC, RP

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.

The Tenants also applied for dispute resolution, although failed to attend the hearing. Accordingly, the Tenant's application is dismissed without leave to reapply.

Only the Landlord's agent and W.S. appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

W.S. testified he served the Tenants with the Notice of Hearing and their Application on March 16 by registered mail. A copy of the registered mail receipt and tracking number was provided in evidence. Under the Act documents served this way are deemed served 5 days later; accordingly, I find the Tenants were duly served as of March 21, 2015.

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.

The tenancy began June 1, 2014. Monthly rent was payable in the amount of \$900.00. A security deposit in the amount of \$450.00 was paid on June 1, 2014.

The Tenant failed to pay rent for the month of March 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on March 5, 2015 in which the amount of \$900.00 was noted as due as of March 1, 2015 (the "Notice").

Based on the testimony of W.S., and the Proof of Service—Notice to End Tenancy, I find that the Tenants were served with the Notice on March 5, 2015 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 Tenant was served with the Notice as of March 8, 2015.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, March 13, 2015. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

Although the Tenants filed to dispute the Notice, they did not attend the hearing.

M.J. testified that the Tenant also did not pay rent for April 2015.

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 they did not attend the hearing to dispute the Notice. As the Tenants application is dismissed and they 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 \$1,850.00 comprised of \$900.00 for rent for the month of March 2015 and \$900.00 for rent for the month of April 2015 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$450.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$1,400.00.

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 attend 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 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 02, 2015

Residential Tenancy Branch

