



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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 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.

The landlord attended the hearing, gave affirmed testimony, and provided evidentiary material in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of this hearing, no one for the tenants attended. The landlord testified that the tenants were served on March 19, 2015 by registered mail and has provided copies of both sides of the Registered Domestic Customer Receipts stamped by Canada Post for each of the tenants, showing that date and the address of the rental unit, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord.

All evidence and testimony of the landlord 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?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- 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 testified that this month-to-month tenancy began on October 15, 2014. Rent in the amount of \$1,350.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$675.00 which is still held in trust by the landlord and no pet damage deposit was collected. The landlord drove by the rental unit today and a moving trailer is there and it appears the tenants are moving out. A copy of the tenancy agreement has been provided.

The landlord further testified that the tenants were in arrears of rent in February, 2015 the sum of \$1,010.00 and the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on February 11, 2015 by posting it to the door of the rental unit. A copy of the first page of the notice has been provided, and the landlord testified that it was a clerical error in not sending both pages as evidence however both pages were served on February 11, 2015. The notice is dated February 11, 2015 and contains an expected date of vacancy of February 21, 2015 and states that the tenants failed to pay rent in the amount of \$1,010.00 that was due on February 1, 2015.

The landlord has also provided a copy of a tenant ledger showing that the tenants were in arrears of rent the sum of \$320.00 in December, 2014, no payment was made for January or February's rent on the 1st day of the months, however on January 27, 2015 the tenants paid \$790.00 and made another payment of \$1,220.00 on February 10, 2015 which left a balance of \$1,010.00.

The tenancy agreement also provides a "fine" in the amount of \$25.00 for late payments of rent which was added to the ledger. The landlord testified that the amount is a late fee, not a fine or a penalty, and is simply wording contained in the printed tenancy agreement. The tenants paid an additional \$1,300.00 on February 25, 2015 and the landlord charged the \$25.00 late fee, which resulted in an overpayment of \$265.00. No rent has been paid for March, or April and the landlord claims an additional \$25.00 late fee.

The landlord has not been served with an application for dispute resolution by the tenants disputing the notice.

Analysis

The *Residential Tenancy Act* states that once a tenant has been served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full, in which case the notice has no effect, or dispute the notice. 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 within 10 days of service, or deemed service. In this case, I accept the testimony of the landlord that the tenants were served with the notice on February 11, 2015 by posting it to the door of the rental unit, and that it is deemed to have been served 3 days later, or February 14, 2015.

After reviewing the evidentiary material provided, I make the following findings in chronological sequence:

- As at January 1, 2015 the tenants owed \$320.00 for December, 2014 rent, and \$1,350.00 for January, 2015 rent, for a total of \$1,670.00;
- On January 27, 2015 the tenants paid \$790.00 which left a balance due of \$880.00;
- On February 1, 2015 rent became due in the amount of \$1,350.00, leaving a new balance of \$2,230.00;
- On February 10, 2015 the tenants paid \$1,220.00, leaving a balance of \$1,010.00 owing;
- On February 11, 2015 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities stating that the tenants failed to pay rent in the amount of \$1,010.00 that was due on February 1, 2015;
- On February 25, 2015 the tenants paid \$1,350.00, which left a credit balance of \$340.00;
- On March 1, 2015 rent became due in the amount of \$1,350.00, leaving a new balance of \$1,010.00;
- On April 1, 2015 rent became due in the amount of \$1,350.00, leaving a new balance of \$2,360.00.

In the circumstances, I find that the landlord has established a monetary claim for unpaid rent in the amount of \$2,360.00. I further find that the landlord is entitled to late fees in the amount of \$25.00 for each of the months of February, March and April, 2015, for a total of \$75.00.

The tenants were deemed served with the notice on February 14, 2015 and had until February 19, 2015 to dispute the notice or pay the rent in full. The tenants didn't dispute the notice or pay the rent in full until February 25, 2015 which is beyond the 5

days, and I find that the landlord is entitled under the *Residential Tenancy Act* to an Order of Possession on 2 days notice to the tenants.

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 \$675.00 security deposit in partial satisfaction of the claims and I grant a monetary order in favour of the landlord for the difference in the amount of \$1,810.00.

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 \$675.00 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 \$1,810.00.

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 29, 2015

Residential Tenancy Branch

