



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, FF, LRE, MNSD, OLC, RP, OPR, MNR

Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlords' application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice");
2. To have the landlord make emergency repairs for health or safety reasons;
3. To suspend or set condition on the landlord's right to enter the rental unit;
4. For the return of all or part of the security deposit or pet damage deposit;
5. To have the landlord comply with the Act, regulation and/or tenancy agreement;
6. To recover the cos of filing the application.

Preliminary matter

Landlords' application

The landlords attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlords testified the Application for Dispute Resolution and Notice of Hearing were served, by registered mail sent on May 16, 2015, Canada post tracking numbers were provided as evidence of service. The landlords indicated the Canada post track history indicated the items were successful delivered on May 21, 2015.

I find that the tenants have been duly served in accordance with the Act.

Tenant's application

At the outset of the hearing the landlords testified that they were not served with the tenants' application for dispute resolution. As the tenants did not attend the hearing to provide any evidence of service, and their respective application is significantly link to the landlord's application. I find it appropriate in this case to dismiss the tenants' application without leave to reapply.

Issues to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on January 15, 2015. Rent in the amount of \$2,350.00 was payable on the first of each month. The tenants paid a security deposit of \$1,175.00 and a pet damage deposit of \$850.00. The landlords stated that by verbal agreement that they reduced the tenants rent to \$2,330.00. Filed in evidence is a copy of the tenancy agreement.

The landlords testified that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent, issued on May 4, 2015, which was personally served on the tenant AA, on the same day and witnessed. Filed in evidence is a copy of the Notice. Filed in evidence is a proof of service document.

The landlords testified that at the time the Notice was issued, the tenants were in rent arrears of \$3,990.00. The landlords stated the tenants have further failed to pay rent for June 2015. The landlords seek to recover unpaid rent in the amount of \$6,320.00.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

I accept the undisputed testimony of the landlords, that the tenants were served with a notice to end tenancy for non-payment of rent on May 4, 2015, by personal service, which was witnessed.

The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

Although the tenants' filed an application for dispute resolution, on May 12, 2015, that application was not filed within five after the notice was received, nor was the outstanding rent paid. Therefore, the tenants were conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Therefore, I find that the landlords are is entitled to an order of possession, pursuant to section 55 of the Act, 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 further accept the undisputed testimony of the landlords that the tenants failed to all rent for April 2015, May 2015, and June 2015.

Therefore, I find that the landlords have established a total monetary claim of **\$6,420.00** comprised of unpaid rent as noted above and the **\$100.00** fee paid by the landlords for this application.

I order that the landlords retain the security deposit of **\$1,175.00** and the pet damage deposit of **\$850.00** in partial satisfaction of the claim and I grant the landlords an order pursuant to section 67 of the Act, for the balance due of **\$4,395.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlords are granted an order of possession, and may keep the security deposit and pet damage deposit in partial satisfaction of the claim. I grant 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: June 25, 2015

Residential Tenancy Branch

