



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, 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 damage to the unit, site or property; 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, neither of the tenants attended. 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. The landlord has provided copies of 2 Canada Post cash register receipts dated June 3, 2015 as well as 2 Registered Domestic Customer Receipts issued to each of the tenants at the rental address. The landlord testified that the hearing packages were sent by registered mail to each of the tenants individually on June 3, 2015 and were returned marked, "Unclaimed." I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence provided by 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 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 damage to the unit, site or property?

Background and Evidence

The landlord testified that this month-to-month tenancy began in February, 2013 and the tenants still reside in the rental unit. Rent in the amount of \$1,000.00 per month is payable in advance on the 1st day of each month. The landlord also collected a security deposit from the tenants in the amount of \$500.00 in September, 2014 which is still held in trust by the landlord.

The tenants failed to pay any rent for October, November or December, 2014. Rent for January and March, 2015 was paid, but the tenants paid no rent for February, May, June or July, 2015, leaving arrears outstanding of \$7,000.00. The landlord personally served one of the tenants on May 8, 2015 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. The notice is dated May 8, 2015 but contains no effective date of vacancy. It states that the tenants failed to pay rent in the amount of \$5,000.00 that was due on May 1, 2015 and \$3,069.55 for unpaid utilities following a written demand on May 1, 2015. The landlord testified that there was not a written demand, however the parties had conversations about paying the water utilities. Copies of the utility bills have not been provided. No rent has been collected since the issuance of the notice, and the landlord has not been served with an application for dispute resolution by the tenants disputing the notice.

The landlord further testified that the tenants have not allowed the landlord into the rental unit to inspect and the landlord is uncertain of the extent of any damages that may exist in the rental unit.

Analysis

The *Residential Tenancy Act* states that once 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 contained in the notice, which must be no less than 10 days after service. In this case, there is no effective date contained in the notice, however the *Act* also states that incorrect effective dates contained in such a notice are changed to the nearest date that complies with the *Act*. The landlord testified that the notice was served on May 8, 2015 and therefore, I find that the effective date is May 18, 2015. The tenants did not pay the rent and did not dispute the notice, and therefore are conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession.

With respect to the monetary claim, I am satisfied from the evidence and testimony of the landlord that the tenants are in arrears of rent the sum of \$7,000.00, and I grant a monetary order in favour of the landlord for that amount.

With respect to the landlord's claim for utilities, there are no utility bills to support the claim, and I dismiss that portion of the landlord's application.

With respect to the landlord's claim for damages, the landlord has not yet been in the rental unit to inspect, and I find that the application is premature, and I dismiss the landlord's claim for damages with leave to reapply.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

The landlord has not applied to keep the security deposit, and I leave it to the parties to deal with it in accordance with Section 38 of the *Residential Tenancy Act*.

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 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 \$7,100.00.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

This order is 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: July 16, 2015

Residential Tenancy Branch

