



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent and damages and to recover the filing fee for the Application under the Residential Tenancy Act (the “Act”).

Only the Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified that they served both Tenants individually with the Notice of Hearing and Application by registered mail, sent on July 3, 2015. Copies of the mailings were supplied in evidence. Under the Act registered mail is deemed served five days after mailing. I find the Tenants have been duly served under the Act.

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.

Preliminary Issues

The Landlord did not initially claim to keep the security deposit in this matter and was allowed to amend the Application to include a request to keep the security deposit in partial satisfaction of the claims, as explained below.

In addition to rent for June and July, the Landlord had requested a monetary order for damages to the rental unit. However, the evidence for these damages was submitted late and since the Tenants had vacated the rental unit without leaving a forwarding address, the Landlord could not confirm that the Tenants had been served with this evidence in any event. Therefore, I dismiss the damages claims with leave to reapply.

The Tenants have already vacated the rental unit after receiving the 10 day Notice to End Tenancy, and the Agent testified the Landlord does not require an order of possession.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to monetary relief?

Background and Evidence

The tenancy started in January of 2015, under an oral tenancy agreement. Pursuant to the Act oral tenancy agreements are valid, although in practise this is not recommended.

The Agent testified that the monthly rent was \$630.00, payable on the first day of the month, and the Tenants paid a security deposit of \$315.00.

Based on the affirmed testimony of the Agent, I find that the Tenants were served with a 10 day Notice to End Tenancy for non-payment of rent on June 16, 2015, by posting to the door. In evidence the Landlord has provided a statement from a witness who saw the 10 day Notice to End Tenancy being posted to the door on that date.

The Tenants did not pay rent for June or July of 2015, and there is no evidence they applied to dispute the Notice. The Notice did have an incorrect effective date, in that it was earlier than allowed. However, under the Act incorrect effective dates automatically correct and therefore, the effective date of the Notice was June 26, 2015.

As the Tenants did not dispute the Notice, and breached the Act and tenancy agreement when they did not pay the rent, they are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective end date of the tenancy in the Notice, June 26, 2015. The Tenants vacated the rental unit sometime in late July 2015, without notifying the Landlord.

Analysis

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

Although the Landlord is entitled to an order of possession in these circumstances, the Tenants have vacated the rental unit and therefore, an order of possession is no longer required.

Based on the undisputed testimony, I find that the Tenants have failed to pay rent under the Act and tenancy agreement for June and July of 2015, totalling \$1,260.00.

I find that the Landlord is still holding the security deposit of \$315.00, and has suffered a loss due to the breach of the Tenants. Under section 64 of the Act, I allow the Landlord to amend their claim to include a request to retain the security deposit. Furthermore,

pursuant to section 72 of the Act, I allow the Landlord to retain the security deposit in partial satisfaction of the claim.

I find the Landlord has established a total monetary claim of **\$1,310.00**, comprised of the rent owed for June and July 2015, and the \$50.00 fee paid by the Landlord for this application. I order that the Landlord retain the deposit of **\$315.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$995.00**.

This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Landlord has leave to apply for further monetary orders.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy, and vacated the rental unit. Therefore, an Order of Possession is not required.

The Landlord is granted a monetary order for rent due, and may keep the security deposit, and has leave to apply for further monetary compensation.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 27, 2015

Residential Tenancy Branch

