



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bristol Estates
and [tenant name suppressed to protect privacy]

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.

An agent for the landlord company attended the hearing and gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of this hearing personally on June 17, 2015, no one for the tenants attended the hearing. 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's agent. The landlord's agent testified that the tenants were individually served on that date and in that manner and has provided 2 proof of service documents signed by the person who served them and by the tenants. I am satisfied that the tenants have both been served in accordance with the *Residential Tenancy Act*.

All evidence provided has been reviewed and is considered in this Decision, along with the testimony of the landlord's agent.

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's agent testified that this tenancy began on June 15, 2006 as a fixed term tenancy until May 31, 2007, after which it became a month-to-month tenancy, and the tenants still reside in the rental unit. Rent in the amount of \$858.00 is currently payable in advance on the 1st day of each month. On June 11, 2006 the landlord collected a deposit from the tenants in the amount of \$795.00, which includes a security deposit as well as a pet damage deposit. That deposit is still held in trust by the landlord. A copy of the tenancy agreement has been provided.

The landlord's agent further testified that on June 2, 2015 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy of both pages of the notice has been provided and it is dated June 2, 2015 and contains an effective date of vacancy of June 14, 2015 for unpaid rent in the amount of \$658.00 that was due on June 1, 2015. Prior to its issuance the tenants paid \$200.00 for rent on May 29, 2015 for the month of June, leaving a balance of \$658.00 outstanding. After its issuance, the tenants paid \$300.00 on June 18, 2015 and \$333.00 on June 30, 2015, leaving \$23.00 owing. On July 6, 2015 the tenants paid \$100.00, and another \$250.00 on July 15, \$150.00 on July 24, and \$481.00 on July 31, 2015. Those payments left a credit of \$100.00 towards August rent, but nothing has been paid since. The tenants now owe \$758.00 to the end of August.

The landlord's agent further testified that the tenancy agreement provides for late payments of rent of \$25.00, which the landlord seeks for the months of June, July and August, 2015.

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

The landlord seeks an Order of Possession and a monetary order for \$758.00 for unpaid rent to the end of August, 2015 as well as \$75.00 late fees, an order permitting the landlord to keep the security deposit, and recovery of the \$50.00 filing fee.

Analysis

Having heard from the landlord's agent, and considering the evidentiary material provided, I am satisfied that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served by posting it to the door of the rental unit on June 2, 2015, which is deemed to have been served 3 days later, or June 5, 2015. The tenants didn't pay the rent in full and did not dispute the notice within 5 days, however, the landlord continued to collect rent after the effective date of the notice, and there is no evidence before me

that the landlord provided any notice to the tenants that the rent was being accepted for use and occupancy only and did not serve to reinstate the tenancy. I refer to Residential Tenancy Branch Policy Guideline #11, which states, in part:

“If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only,
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties.

“In order to be effective, a notice ending a tenancy must be clear, unambiguous and unconditional.”

In this case, the landlord continued to collect rent after the effective date of the notice without providing the tenants with any indication that the tenancy wouldn't continue, and now claims unpaid rent for the current month. Further, the landlord filed the application for dispute resolution on June 16, 2015 and continued to collect rent without any such indication to the tenants. In the circumstances, I am not satisfied that the landlord is entitled under the *Act* to an Order of Possession.

Since the tenancy is continuing, I decline to grant a monetary order for unpaid rent for the current month. The landlord is at liberty to serve another notice to end the tenancy for the current month if rent remains unpaid.

The Landlord's Application for Dispute Resolution specifies a claim for late fees, and I am satisfied that the landlord has established a claim for \$75.00. Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$50.00 filing fee. I hereby order the landlord to keep \$125.00 of the security deposit in full satisfaction of the claim.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

The landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed, with leave to reapply.

I hereby order the landlord to keep \$125.00 of the \$795.00 security deposit and pet damage deposit in full satisfaction of the landlord's claim for late fees and recovery of the filing fee.

This order is final and binding on the parties.

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: August 13, 2015

Residential Tenancy Branch

