



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction and Preliminary Matter

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord's agent, S.A. appeared at the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified served both the Tenants with the Notice of Hearing and their Application on July 24, 2015 by registered mail. The receipt and tracking number for the registered mailings were introduced in evidence. Under the Act documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of July 29, 2015.

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 and Procedural Matters

At the outset of the hearing, S.A. testified that the tenants vacated the rental unit on August 24, 2015. As a result, the Landlord requested to withdraw their request for an Order of Possession as the Tenants had already given up possession of the rental unit by vacating the rental unit on August 24, 2015.

Issues to be Decided

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

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated the tenancy began June 1, 2015. Monthly rent was payable in the amount of \$850.00 and the Tenants paid a security deposit in the amount of \$425.00.

The Tenants failed to pay rent for the month of July 2015. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on July 8, 2015 indicating the amount of \$850.00 was due as of July 1, 2015 (the "Notice").

Based on the testimony of S.A. and the filed proof of service, I find that the Tenants were personally served with the Notice on July 8, 2015

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, July 13, 2015. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

S.A. testified that the Tenants did not apply to cancel the Notice nor did they pay the outstanding rent. Further S.A. testified that the Tenants did not pay rent for August 2015 and that as they vacated on August 24, 2015, the Landlord was not able to re-rent the rental unit for September 2015. Accordingly, the Landlord also sought compensation for rent for August 2015 and September 2015.

Analysis

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

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the Act, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority

under the Act to not pay rent. In this situation the Tenants had no authority under the Act to not pay rent.

I find that the Landlord has established a total monetary claim of \$2,600.00 comprised of unpaid rent for July, August and September 2015 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$425.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,175.00.**

This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is awarded monetary compensation for unpaid rent for July, August and September 2015, as well as recovery of the filing fee, may keep the security deposit in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as 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 *Residential Tenancy Act*.

Dated: September 22, 2015

Residential Tenancy Branch

