



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BLUERIDGE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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, and to recover the filing fee for the Application.

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 the Tenants were served with the Notice of Hearing, the Application and evidence by registered mail, sent on July 25, 2015. The Agent testified that the male Tenant is not in the country and that the female Tenant was still living in the rental unit at this time. Under the Act mail recipients are deemed served five days after mailing; however, the evidence indicates the male Tenant was likely not served. Therefore, I find the female Tenant has been duly served in accordance with 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.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an order of possession and monetary relief?

Background and Evidence

This tenancy began in May of 2011, with the parties entering into a written tenancy agreement. The Landlord increased the rent during the tenancy and in evidence are copies of the notices of rent increase. At the end of the tenancy the monthly rent was \$1,518.00. The Tenants paid a security deposit of \$700.00 at the start of this tenancy.

Based on the testimony of Agent, I find that the Tenants were served with a 10 day Notice to End Tenancy for non-payment of the July rent on July 6, 2015, by posting it to the door (the "Notice"). The Notice is deemed served three days later under the Act.

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

The Agent testified that the Tenants also failed to pay rent for August and September in addition to the July rent. The Agent testified the total amount now due is \$4,554.00.

The Agent testified that it appears the Tenants vacated the rental unit. The Agent requested to amend the Application to retain the security deposit in partial satisfaction of the claims.

Analysis

Based on the above, the undisputed 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.

I find that the Landlord is entitled to an order of possession effective **today at 1:00 p.m., September 30, 2015**. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord is still holding the security deposit of \$700.00, 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.

Therefore, I find that the Landlord has established a total monetary claim of \$4,604.00 comprised of July, August and September rents of \$4,554.00 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$700.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$3,904.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As I find the female Tenant was the only Tenant served with the notice of hearing, I provide the monetary order in her name only.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are conclusively presumed under section 46 of the Act, to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession, may keep the security deposit and interest 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 30, 2015

Residential Tenancy Branch

