



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 16, 2015, by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenants. The Landlord provided affirmed testimony that the Tenants were served notice of this application and this hearing by registered mail on August 21, 2015. Canada Post tracking information was submitted into evidence.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

Based on the undisputed evidence of the Landlord, I find that the Tenants were served notice of this hearing in accordance with Section 89(1) (c) of the Act and that notice was deemed received on August 26, 2015 five days after it was mailed. Accordingly, I continued to hear the undisputed evidence of the Landlord in absence of the Tenants.

Issue(s) to be Decided

1. Have the Tenants vacated the rental property?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the Tenants entered into a month to month tenancy that began on July 1, 2014. Rent of \$900.00 was due on or before the first of each month and on or around July 1, 2014 the Tenants paid \$450.00 as the security deposit.

The Landlord testified that when the Tenants failed to pay their \$900.00 August 1, 2015 rent the Landlord posted a 10 Day Notice to the Tenant's door on August 3, 2015. The Tenants continued to occupy the rental unit until September 1, 2015, at which time possession was returned to the Landlord. As such, the Landlord withdrew her request for an Order of Possession.

On August 2, 2015 the Landlord allowed the Tenants to use their security deposit towards the unpaid rent which left a balance owing for August rent of \$450.00.

The Landlord testified that her new tenants were not able to move into the rental unit until September 6, 2015. As a result she had to give the new tenants a discount of \$225.00. She is seeking to recover the \$225.00 in lost rent for September 2015.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants are deemed to have received the 10 Day Notice on August 6, 2015 three days after it was posted to the door. Therefore, the effective date of the Notice was **August 16, 2015**.

The Tenants neither paid the rent nor disputed the Notice. The Tenants vacated the rental unit as of September 1, 2015. The Landlord regained possession and withdrew her request for an Order of Possession.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The Landlord claimed unpaid rent of \$450.00 that was due August 1, 2015. Based on the aforementioned, I award the Landlord unpaid rent for August 2015, in the amount of **\$450.00**, pursuant to section 67 of the Act.

I accept the Landlord's undisputed submission that she suffered a loss of rent of \$225.00 as her new tenants were unable to occupy the rental unit until September 6, 2015. That loss was a direct result of the Tenants' breach of the Act. Therefore, I grant the claim and award the Landlord loss of rent in the amount of **\$225.00**, pursuant to section 67 of the Act.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Landlord was successful with her application and was awarded monetary compensation in the amount of **\$725.00** (\$450.00 + \$225.00 + \$50.00).

The Landlord has been issued a Monetary Order for **\$725.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with Small Claims Court and enforced as an Order of that Court.

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: November 02, 2015

Residential Tenancy Branch

