



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MND, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for an Order of Possession based on unpaid rent and cause, 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.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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 Issue

The Landlords failed to introduce a copy of the 10 Day Notice of Unpaid Rent or Utilities. As such, the Landlords' application for an Order of Possession for unpaid Rent was dismissed.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession for Cause?
2. Should the Landlords receive a Monetary Order for unpaid rent and damages?
3. Are the Landlords entitled to retain the Tenants' security deposit?
4. Should the Landlords recover the filing fee?

Background and Evidence

The tenancy began February 1, 2015. Monthly rent was payable in the amount of \$800.00. A security deposit in the amount of \$400.00 was paid at the start of the tenancy.

The Landlords allege that the Tenants were repeatedly late paying rent, and that they had not paid rent for October or November 2015. On August 3, 2015 the Landlord personally served on the Tenants a 1 Month Notice to End Tenancy for Cause (also dated August 3, 2015) (the "Notice").

The Notice informed the Tenants that the Tenants had ten days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlords testified that the Tenants have not filed to dispute the Notice.

The Tenant, A.W., confirmed he received the Notice, but stated it was received at 6:00 p.m. on August 4, 2015. He agreed the Tenants had not filed an application to dispute the Notice.

The Tenant, A.W., testified that he did not pay the October and November rent as he was saving the money to purchase a pellet stove for the rental unit, as the baseboard heaters were inadequate sources of heat. He stated that he would be able to pay the outstanding rent by November 25, 2015 and asked that the Landlords permit he and his family to remain in the rental unit until the 30th of November should he make this payment.

The Landlord, J.H., confirmed that he was agreeable to the Tenants remaining in the rental unit until 1:00 p.m. on November 30, 2015 provided the outstanding rent was paid by November 25, 2015. He further confirmed that should that payment not be made he intended to serve the Order of Possession on the Tenants.

Analysis

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

The Tenants 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.

While the 10 Day Notice was not before me, I remind the Tenants that under section 26 of the Act, the Tenants must not withhold rent, even if the Landlords are in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent. The Tenants are not permitted to unilaterally decide to withhold rent to pay for a stove, even if they believe such a stove is necessary. In this situation the Tenants had no authority under the Act to not pay rent.

I find that the Landlords are entitled to an Order of possession effective **two days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an order of that Court. The Landlords have the discretion to delay service of the Order of Possession should the Tenants pay the rent by November 25, 2015 as proposed.

I find that the Landlord has established a total monetary claim of \$1,650.00 comprised of \$800.00 for rent for October 2015, and \$800.00 for rent for November 2015 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the security deposit of \$400.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,250.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Landlords' claim for a monetary Order for damages to the rental unit is dismissed with leave to reapply.

Conclusion

The Tenants failed to dispute the 1 month 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 Landlords are granted an Order of Possession, which is effective two days after service. The Landlords have discretion to delay service

of the Order of Possession should the Tenants pay the outstanding rent by November 25, 2015.

The Landlords may keep the security deposit and interest in partial satisfaction of the claim, and is granted a Monetary Order for the balance due. The Landlords claim for a Monetary Order for damages to the rental unit is dismissed with leave to reapply once the rental unit is vacated.

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: November 13, 2015

Residential Tenancy Branch

