



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession and a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of the application.

The landlords both attended the hearing, provided evidentiary material in advance of the hearing, and each gave affirmed testimony. However, despite being served with the Landlord Application for Dispute Resolution, evidentiary material and notice of this hearing by registered mail on September 24, 2015, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participants who joined the call were the landlords. One of the landlords testified that the tenant was served on that date and in that manner and has provided a copy of a Canada Post tracking print-out and Registered Domestic Customer receipt, both bearing the same tracking number assigned by Canada Post, which confirms the landlord's testimony, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The first landlord testified that this rental unit was purchased by the landlords with a possession date of September 1, 2015 and the tenant was already resident in the rental unit. A copy of the Contract of Purchase and Sale has been provided. The landlord believes the tenant moved into the rental unit on June 1, 2015 and paid a security deposit

in the amount of \$325.00 on that date to the previous owner. The Contract of Purchase and Sale also states that the amount of rent for the rental unit is \$650.00 payable on the 1st day of each month. The rental unit is one of 2 basement suites within the rental complex.

The landlord met with the tenant and asked for rent for September, 2015 but the tenant stated he didn't have it with him and would pay later. The tenant continued to promise to pay but hasn't paid the landlords any rent since the landlords purchased the rental unit, and now the landlords can't reach the tenant.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 10, 2015 by posting it to the door of the rental unit. A copy of both pages of the 2-page form have been provided and it is dated September 10, 2015 and contains an expected date of vacancy of September 20, 2015 for \$650.00 of unpaid rent that was due on September 1, 2015. No rent has been collected since the issuance of the notice and the tenant is now in arrears the sum of \$1,950.00 to the end of November, 2015. The landlords have not been served with an application for dispute resolution by the tenant disputing the notice.

The second landlord testified that the Statement of Adjustments for the purchase of the rental property did not include the \$325.00 security deposit. It is mentioned in the Contract of Purchase and Sale, which states: "The Seller warrants that (the tenant) is a month-to-month lease; the monthly rent is \$650.00 including utilities; payable on the first day of each month, a security deposit of \$325.00 was taken on June 1, 2015 and the last rental increase was N/A." The landlords tried to contact the previous owner through their lawyer but they refuse to communicate. The landlord believes the previous owner is keeping the security deposit because the tenant owes previous rent.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit within 10 days of service. In this case, I am satisfied that the landlord served the tenant with a copy of the notice on September 10, 2015 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or September 13, 2015. The tenant did not pay the rent and did not dispute the notice, and therefore I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlords are entitled under the *Act* to an Order of Possession on 2 days notice to the tenant.

I am also satisfied that the tenant has paid the landlords absolutely no rent since they purchased the rental unit, and the landlords have established that the monthly rent is \$650.00. I find that the landlords are entitled to a monetary order for unpaid rent in the amount of \$1,950.00.

Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$50.00 filing fee.

The landlords have not made an application with respect to the security deposit, and I make no findings of fact or law with respect to it.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,000.00.

These orders are final and binding and may be enforced.

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 24, 2015

Residential Tenancy Branch

