



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit and pet damage deposit (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1112 in order to enable the tenants to connect with this teleconference hearing scheduled for 1100. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that the landlord served the tenants with the dispute resolution package on 3 December 2015 by registered mail. The landlord provided me with Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent testified that the landlord served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 23 November 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenants were deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

Amendment to Landlord's Claim

At the hearing the agent asked to amend the landlord's application to include unpaid rent due 1 December 2015. The landlord asked to amend its application to include its cleaning costs.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

As the tenants knew or ought to have known that they would incur rent due 1 December 2015 if they remained in possession of the rental unit, there is no undue prejudice to the tenants in allowing the landlord's amendment. This amendment is allowed.

The landlord's application does not put the tenants on notice that cleaning costs would be a component of this application. The tenants are entitled to know the claim against which they must respond. As the tenants did not have knowledge of the existence of this claim, it would unduly prejudice the tenants to permit the landlord to amend its application for cleaning costs. This amendment is not permitted.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 15 March 2014. The parties entered into a fixed-term tenancy agreement for the period ending 14 March 2016. Monthly rent of \$2,300.00 was due on the first. The landlord continues to hold the tenants' security deposit in the amount of \$1,150.00 and pet damage deposit in the amount of \$1,150.00.

The tenancy ended on or about 15 December 2015 when the tenants vacated the rental unit.

On 23 November 2015, the landlord issued the 10 Day Notice to the tenants. The 10 Day Notice was dated 23 November 2015 and set out an effective date of 3 December 2015. The 10 Day Notice set out that the tenants failed to pay \$9,200.00 in rent that was due on 1 November 2015. The rental arrears included rent in the amount of \$2,300.00 for each of August, September, October and November.

The agent testified that the landlord has not received any payments towards rent arrears. The agent testified that the rental unit has not yet been rerented. The agent testified that she is not aware of any reason that would entitle the tenants to deduct any amount from rent.

The landlord claims for rental arrears totaling \$11,500.00:

Item	Amount
Unpaid August Rent	\$2,300.00
Unpaid September Rent	2,300.00
Unpaid October Rent	2,300.00
Unpaid November Rent	2,300.00
Unpaid December Rent	2,300.00
Total Monetary Order Sought	\$11,500.00

Analysis

As possession of the rental unit has returned to the landlord, the landlord's claim for an order of possession is now moot. On this basis, I decline to issue an order of possession.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

As the tenants occupied the rental unit as at 1 December 2015, the landlord was entitled to that amount when it became due under the tenancy agreement. The landlord has provided sworn and uncontested evidence that the tenant has unpaid rental arrears totaling \$11,500.00. I find that the landlord has proven its entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The landlord continues to hold the tenants' deposits totalling \$2,300.00. The landlord applied to keep the tenants' deposits. I allow the landlord to retain the deposits in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$9,300.00 under the following terms:

Item	Amount
Unpaid August Rent	\$2,300.00
Unpaid September Rent	2,300.00
Unpaid October Rent	2,300.00
Unpaid November Rent	2,300.00
Unpaid December Rent	2,300.00
Offset Security Deposit	-2,300.00
Recover Filing Fee	100.00
Total Monetary Order	\$9,300.00

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: January 27, 2016

Residential Tenancy Branch

