



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 to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on December 14, 2015. The Landlords filed seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities 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 both Landlords who gave affirmed testimony. No one was in attendance on behalf of the Tenants. The Landlords testified that they personally served the Tenants with copies of their application for Dispute Resolution, the hearing documents, and their evidence in person at the rental unit on December 16, 2015.

Section 89(1)(a) of the *Act* stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to a landlord, may be given to the respondent by leaving a copy with the person.

Based on the above, I accepted the affirmed submissions of the Landlords and find that each Tenant was sufficiently served notice of this proceeding in accordance with section 89(1)(a) of the *Act*. Therefore, I proceeded with the hearing in absence of the Tenants.

On December 14, 2015 the Landlords submitted 4 pages of evidence to the Residential Tenancy Branch (RTB). That evidence consisted of copies of the 2 page 10 Day Notice and the 2 page Proof of Service document.

Issue(s) to be Decided

- 1) Have the Landlords proven entitlement to an Order of Possession?
- 2) Have the Landlords proven entitlement to a monetary order?

Background and Evidence

The Landlords testified that they entered into a tenancy agreement with the Tenants for a month to month tenancy that began on October 1, 2015. Rent of \$780.00 was required to be paid on or before the first of each month.

The Landlords stated the Tenants were required to pay \$400.00 as the security deposit. They asserted that the Tenants gave them a \$400.00 cheque as payment for the security deposit and the Tenants requested that the Landlords not cash that cheque as the Tenants wanted to pay the deposit in cash on the following Wednesday. The Landlords stated the Tenants never came with a cash payment and they are still holding onto the cheque.

The Landlords testified that when the Tenants failed to pay their November 1st and December 1st, 2015 rent a 10 Day Notice was personally served to the male Tenant, K.B. on December 6, 2015, in the presence of both Landlords. The 10 Day Notice listed an effective date of December 16, 2015.

The 10 Day Notice listed unpaid rent in the amount of \$1,960.00 that was due December 1, 2015. The Landlords submitted the \$1,960.00 was comprised of \$780.00 for November rent; \$780.00 for December rent; plus \$400.00 for the unpaid security deposit. The 10 Day Notice also listed \$31.00 for unpaid utilities which was an upgrade to the television cable the Tenants had requested and agreed to pay each month.

The Landlord now seeks to recover the unpaid utilities, unpaid rent for November and December, plus payment for January and February 2016 as the Tenants remain in the rental unit and have not made a payment to the Landlords since October 1, 2015 rent was paid. The Landlords also wish to be granted an Order of Possession.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlords and corroborated by their evidence.

Section 7(2) of the *Act* stipulates that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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 received the 10 Day Notice on December 6, 2015 and the effective date of the Notice was December 16, 2015. The Tenants neither paid the rent nor disputed the Notice; therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **December 16, 2015**. Accordingly, I grant the Landlords' request and issue them an Order of Possession effective 2 Days upon service to the Tenants. In the event that the Tenants do not comply with this Order it may be enforced through Supreme Court.

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

The undisputed evidence was the Tenants have not paid the \$780.00 rent required for November or December 2015, in accordance with section 26 of the *Act*. As per the aforementioned, I find the Landlords have met the burden of proof and I award them unpaid rent for November and December 2015, in the amount of **\$1,560.00**.

Section 17 of the *Act* provides that a landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

In regards to the Landlord's request for payment of a \$400.00 security deposit, I accept that the Landlords required a deposit to be paid and the Tenants failed to pay it. That being said, as listed above, this tenancy ended **December 16, 2015** as per the 10 Day Notice. A security deposit is a deposit that is held in trust by a landlord during a tenancy. Therefore, a security deposit is no longer payable in this case, as the tenancy is no longer in effect. If the Tenants cause damage to the rental unit, the Landlords are at liberty to file another application to seek remedy for such damages.

As noted above, this tenancy ended **December 16, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlords are seeking money for loss of rent and use and occupancy of the rental unit for January 2016 and February 2016, not rent. I approve the Landlords' requests to consider awarding them compensation for January 2016 and February 2016 given the delay from the time the Landlords filed their application on December 14, 2015 to the February 3, 2016 hearing date.

As per the foregoing, I grant the application be amended to include the request for compensation for damage or loss under the *Act*, Regulation or tenancy agreement. I grant the request, in part, as it is reasonable to conclude that the Tenants would be expected to pay for their occupation of the rental unit until such time as the Landlords regain possession.

The Tenants continue to occupy the rental unit and the Landlords will not regain possession of the rental unit until after service of the Order of Possession. Once the Landlords regain possession they are required to mitigate there losses by trying to re-rent the unit for as soon as possible, pursuant to section 7(2) of the *Act*, as listed above. Therefore, I conclude the Landlords are entitled to payment for use and occupancy and any loss of rent for the period of January 1, 2016 to February 15, 2016 in the amount of **\$1,170.00** (\$780.0+ \$390.00 which is 1/2 of \$780.00).

In response to the claim for unpaid utilities of \$31.00 for the cable television, in absence of evidence, such as a copy of the cable bill and proof that a copy had been served

upon the Tenants, I find the Landlords submitted insufficient evidence to prove the claim for \$31.00. Therefore, I dismiss the claim for unpaid utilities without leave to reapply.

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 Landlords have been partially successful with their application; therefore I award recovery of the **\$50.00** filing fee

The Landlords have been issued a Monetary Order in the amount of **\$2,780.00** (\$1,560.00 + \$1,170.00 + \$50.00). This Order must be served upon the Tenants and may be enforced through Small Claims Court.

Conclusion

The Landlords were partially successful with their application and were awarded an Order of Possession effective 2 days upon service and a Monetary Order in the amount of **\$2,780.00**.

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: February 03, 2016

Residential Tenancy Branch

