



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, issued on November 11, 2015, (the "Notice"), for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

Both parties appeared gave 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 at the hearing.

Preliminary matters

At the outset of the hearing the tenant indicated that their last name has changed, when they got married. As a result I have amended the style of clause to reflect both names of the female tenant. Further, I have also amended the style of cause to include the male tenants name listed in the tenancy agreement.

At the outset of the hearing the landlord requested to amended their application to include unpaid rent for February 2016. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 62(3) that the landlord's application is amended to include a claim for unpaid rent for February 2016.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on June 1, 2014. Rent in the amount of \$1,250.00 was payable on the first of each month. A security deposit of \$600.00 and a pet damage deposit of \$300.00 were paid by the tenants. The tenants were required to pay 60% of the hydro and gas.

The tenant acknowledged that they received the Notice on November 11, 2015. The tenant indicated that they did not dispute the Notice or pay the rent within five days as they did not have money for rent and were working with a third party to find funding. The tenant indicated they were able to pay November 2015, rent on December 2, 2015.

The landlord testified that November 2015, rent was not paid within five days. The landlord stated the tenants only paid a portion of rent for December 2015, leaving a balance owing of \$625.00. The landlord stated no rent for January 2016 or February 2016, has been paid. The landlord seeks to recover unpaid rent in the amount of \$3,125.00.

The landlord testified that the tenant has also failed to pay their portion of utilities in the amount of \$1,497.00.

The tenant testified since the tenancy started they have paid the total amount of \$23,313.95 to the landlord and the total rent due is \$23,750.00.

The tenant testified that they have paid utilities to the landlord during the tenancy; however, as the landlord did not provide them with copies that are not satisfied that any amount is owed.

Analysis

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

The tenants did not pay the outstanding rent within five days and 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. I find the tenancy legally ended on November 30, 2015, and the tenants are now overholding the premises.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, 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 **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

While I accept the tenant's evidence that they have paid to the landlord the amount of \$23,313.95, I am not satisfied that was just rent as the parties agreed the tenants were responsible to pay 60% of the utilities, since the start of the tenancy in 2014 and I find it highly unlikely that no utilities have been paid since that time.

Further, the tenants did not have money to pay rent for November 2015, and third party assistance was required. I find it reasonable to conclude that was the same reason all of rent was not paid for December 2015 and no rent was paid for January 2016 and February 2016. I find the tenants have breached the Act when they failed to pay rent as

specified in their tenancy agreement and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for the dates noted above in the amount of **\$3,125.00**.

In this case, the landlord is seeking to recover unpaid utilities. The parties did not agreed on any amount owed. As the onus is on the landlord to prove their claim, I find without further evidence from the landlord, such as copies of the utilities and a detail calculation, that the landlord has not met the burden of proof. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence.

I find that the landlord has established a total monetary claim of **\$3,175.00** comprised of unpaid rent, and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$600.00 and pet deposit of \$300.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$2,275.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenants failed to pay rent and did not file to dispute the 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 landlord is granted an order of possession, and may keep the security deposit and pet deposit in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 17, 2016

Residential Tenancy Branch

