



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, 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 and to recover the filing fee from the tenants.

The landlord's agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were served by registered mail sent on February 4, 2016 Canada post tracking numbers were provided as evidence of service. The landlord stated the packages were returned unclaimed.

Residential Tenancy Policy Guideline #17 states,

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

I find that the tenants have been duly served in accordance with Section 90 of the Act.

The landlord's agent, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

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

Background and Evidence

The tenancy began on June 1, 2009. Current rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$400.00 was paid by the tenants.

The landlord's agent testified that the tenants were served with a notice to end tenancy for non-payment of rent on January 6, 2016, by posting to the door. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

The landlord's agent testified that the tenants made a partial payment on January 15, 2016, by cheque; however, their cheque was returned by the financial institution for insufficient funds.

The landlord's agent testified that the tenants have not paid any rent for January 2016, February 2016, and March 2016. The landlord seeks to recover unpaid rent in the amount of \$2,850.00. The landlord's agent stated they seek to retain the security deposit to offset the amount owed.

Analysis

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

The tenants have not paid the outstanding rent 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, which was January 19, 2016. The tenants are now overholding the rental premise.

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 tenant

I find that the landlord has established a total monetary claim of **\$2,950.00** comprised of unpaid rent as stated above and the \$100.00 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 pursuant to section 67 of the Act, for the balance due of **\$2,550.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenant

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 interest 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: March 22, 2016

Residential Tenancy Branch