



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, OPB, MNR

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession for unpaid rent or utilities, for cause and for breach of an agreement, and for a monetary order for unpaid rent or utilities.

Both landlords attended the hearing, one of whom gave affirmed testimony. However, 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. The landlord testified that the tenants were each individually served with the Landlord's Application for Dispute Resolution, evidentiary material and notice of this hearing by registered mail on February 16, 2016. The landlords have provided copies of 2 Registered Domestic Customer Receipts addressed to each of the tenants which are stamped by Canada Post bearing that date, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided by the landlords has been reviewed and is considered in this Decision.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that this month-to-month tenancy began on March 16, 2015 and the tenants still reside in the rental unit. Rent in the amount of \$725.00 per month is payable on the 1st day of each month, and the landlords collected a pro-rated amount for the first month of the tenancy. A copy of the tenancy agreement has been provided which specifies a security deposit in the amount of \$362.50, however the landlord testified that only \$181.00 was collected. Pets are not allowed and the landlords have not collected a pet damage deposit. The security deposit of \$181.00 is still held in trust by the landlords.

The landlord further testified that the tenants are currently in arrears of rent the sum of \$3,875.00, being \$250.00 owed for March, 2015 and \$725.00 for each of the months of October and December, 2015 as well as for each of the months of January through March, 2016.

On February 1, 2016 the landlord posted to the door of the rental unit a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. The notice is dated February 1, 2016 and contains an effective date of vacancy of February 10, 2016 for unpaid rent in the amount of \$2,175.00 that was due on February 1, 2016. The landlords used an incorrect amount of unpaid rent by not considering the unpaid rent for March, 2015 and omitting the unpaid rent for October, 2015 in error.

The tenants have not paid any rent since the issuance of the notice, and the tenants have not served the landlords with an application for dispute resolution disputing the notice.

The landlord also testified that the rent is to be paid into an account set up entirely for the purpose of the rental property. If the tenants don't pay the rent on time into that account, the mortgage payment is marked NSF, and the landlords are charged an additional \$45.00 fee each time. The landlords have provided copies of bank statements, and claim \$405.00 for those fees.

The landlords had filed a previous application for dispute resolution and paid a \$50.00 filing fee. The tenants paid the rent, so the landlords cancelled the hearing. The landlords paid an additional \$100.00 filing fee for this application, and claim both amounts from the tenants.

The landlords seek an Order of Possession and monetary compensation for unpaid rent, bank fees and recovery of both filing fees.

Analysis

Firstly, 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 and serving the landlord. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out by the effective date contained in the notice, which must be no less than 10 days after service or deemed service. In this case, I have reviewed the notice and find that it is in the approved form and contains information required by the *Act*. I am also satisfied that the landlords served the notice on February 1, 2016 by posting it to the door of the rental unit, which is deemed to have been served 3 days later, or February 4, 2016. Therefore, the effective date of vacancy is changed to February 14, 2016. The tenants didn't pay the rent and didn't dispute the notice and didn't move out of the rental unit. Therefore, I find that the landlords are entitled under the *Act* to an Order of Possession on 2 days notice to the tenants.

With respect to the monetary claim, I am satisfied in the evidence before me that the landlords have established a monetary claim for unpaid rent in the amount of \$3,875.00.

If the tenants had given the landlords a cheque that was returned by the financial institution for insufficient funds, the landlords would be entitled to recovery of the service fees charged against the landlords. However, in this case, the NSF fees charged to the landlords are for failure to make the mortgage payment on time, which is not the responsibility of the tenants. Therefore, I decline to order that the tenants repay the landlords \$405.00 for those fees.

Since the landlords have been partially successful with this application the landlords are also entitled to recovery of the \$100.00 filing fee.

The landlords also claim the \$50.00 for the filing fee paid for a previous application. The landlord testified that the landlords cancelled the hearing, and therefore, the landlords were not successful and are not entitled to recovery of that fee now.

The landlords currently hold a security deposit in the amount of \$181.00, but have not applied for an order permitting them to keep it. I order the landlords to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

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 tenants.

I further grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,975.00.

I order the landlords to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

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: March 31, 2016

Residential Tenancy Branch