



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid and/or loss of rent and authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord testified that each of the tenants were served with the landlord's hearing documents by registered mail sent to them on March 10, 2016 at the rental unit address. The landlord confirmed that the tenants were still residing at the rental unit on that date and the registered mail was not returned. The landlord provided the registered mail tracking numbers as proof of service and a search of the tracking numbers showed that the registered mail was successfully delivered. I was satisfied that the tenants were duly served with notification of this proceeding in a manner that complies with the Act and I continued to hear from the landlord without the tenants present.

Preliminary and Procedural Matters

The parties participated in a dispute resolution proceeding on March 29, 2016. The file number for that proceeding is recorded on the cover page of this decision. By way of that proceeding the parties agreed that the tenancy would end on April 1, 2016 at 1:00 p.m. pursuant to a 1 Month Notice to End Tenancy for Cause and an Order of Possession was provided to the landlord with that decision. The landlord confirmed that the tenants did return possession of the rental unit to the landlord in the first few days of April 2016 and that requesting an Order of Possession by way of the application before me has become a moot point. Accordingly, I did not consider the request for an Order of Possession any further.

The landlord also requested that his monetary claim be reduced to withdraw his claim for loss of rent for April 2016. Since this request is beneficial to the tenants I found it non-prejudicial and I permitted the amendment. The landlord also submitted that the tenants have authorized him to retain the security deposit, in writing, to compensate the landlord for debris and abandoned property left at the rental unit by the tenants. The

landlord also had a signed statement from the tenants that any property they left at the residential property was of no value and that the landlord was at liberty to dispose of it. Since the application before me only pertained to unpaid rent and not a claim for garbage disposal I permitted the landlord to withdraw his application to retain the security deposit in partial satisfaction of unpaid rent. Accordingly, the remainder of this decision pertains to the landlord's request to recover unpaid rent for the months of February 2016 and March 2016.

Issue(s) to be Decided

Is the landlord entitled to recover unpaid rent for the months of February 2016 and March 2016?

Background and Evidence

The month to month tenancy commenced April 1, 2015. The tenants were required to pay rent of \$1,450.00 on the first day of every month. The tenants did not pay rent for February 2016. On February 29, 2016 the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month to End Tenancy for Cause to the male tenant. The tenants filed to dispute the 10 Day Notice and, as mentioned previously in this decision, at that hearing the parties agreed to end the tenancy effective April 1, 2016 pursuant to the 1 Month Notice to End Tenancy for Cause.

The landlord submitted that the rent for February 2016 and March 2016 was not paid by the tenants and remains outstanding and the landlords seek a Monetary Order to recover the unpaid rent.

Documentary evidence provided by the landlords included a copy of the tenancy agreement; the 10 Day Notice to End Tenancy for Unpaid Rent issued on February 29, 2016; and Proof of Service signed by the landlord and a witness to attest to service of the Notices to End Tenancy on February 29, 2016.

Analysis

Under section 26 of the Act a tenant is required to pay rent when due in accordance with their tenancy agreement unless the tenant has a legal right under the Act to withhold rent.

Based upon the evidence before me, I find the tenants were obligated to pay monthly rent of \$1,450.00 pursuant to their tenancy agreement and that their obligation to do so

continued until such time the tenancy ended since I was presented no evidence to suggest the tenants had a legal right under the Act to withhold rent. Since the tenancy was set to end on April 1, 2016 pursuant to a previous dispute resolution proceeding and the tenants were in possession of the rental unit until at least that date, I find the tenants obligated to pay rent for the months of February 2016 and March 2016. I accept the undisputed evidence before me that the tenants did not pay the rent for February 2016 and March 2016; therefore, I grant the landlord's request to recover the sum of \$2,900.00 from the tenants for unpaid rent for those months.

I further award the landlords recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlords are provided a Monetary Order in the total amount of \$3,000.00 to serve and enforce upon the tenants.

Conclusion

The landlords have been provided a Monetary Order in the sum of \$3,000.00 for unpaid rent for February 2016 and March 2016 and recovery of the filing fee.

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: April 20, 2016

Residential Tenancy Branch