



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 dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, 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 matter

At the outset of the hearing the landlord stated that the issue of the security deposit is not required to be heard, as the security deposit was applied to unpaid rent for January 2016, by agreement.

At the outset of the hearing the tenant JM, indicated that their legal name is PM. As a result, I have amended the style of cause to include both names.

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

Based on the testimony of the landlord, I find that the tenants were served with a notice to end tenancy for non-payment of rent on February 28, 2016, by personal service. 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 testified that the tenants did not pay any rent for February 2016, when the notice to end tenancy was issued, and they have not paid any rent for March 2016, or

April 2016. The landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$2,400.00.

The tenant's agent testified that the tenants made a part payment of \$200.00 to the landlord. The agent stated that the tenants have not paid any further rent as the landlord has not done repairs.

The landlord argued that the tenants have not made any payments since the notice to end tenancy was issued. The landlord stated that they give receipts when rent is paid.

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. I find the tenancy legally ended on March 10, 2016, 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.

In this case, the evidence of the landlord was the tenants have not paid any rent. The evidence of the tenant's agent was the tenants paid the amount of \$200.00. Both versions are probable. However, I accept the landlord's version as the tenants have provided no evidence, such as a receipt, or banks statements to show they had the money and that it was paid.

I find that the landlord has established a total monetary claim of **\$2,500.00** comprised of unpaid rent and the \$100.00 fee paid by the landlord for this application.

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 tenants

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 a monetary order for the unpaid rent.

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 07, 2016

Residential Tenancy Branch