



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEWIS APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNSD, MNDC, FF, CNR, RP, RR, O

Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing at 11:00 a.m. on June 17, 2016.

The Landlord applied requesting an order of possession; a monetary order for unpaid rent or utilities; and to keep the security deposit in partial satisfaction of the claim.

The Tenants applied to cancel a 10 Day Notice To End Tenancy for Unpaid Rent and for money owed or compensation for damage or loss under the *Act*.

The Landlord and the Landlord's agents were present at the hearing; however the Tenants did not appear. The Landlord testified that he served the Tenants with the Notice of Hearing and evidence by handing it directly to the Tenants on May 19, 2016.
I find that the Tenants were duly served under the *Act*.

At the start of the hearing I introduced myself. The Landlord was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The Tenants applied for dispute resolution to cancel a 10 Day Notice To End Tenancy For Unpaid Rent dated May 10, 2016, and for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement, but failed to attend the hearing.

The Landlord was at the hearing ready to proceed. Since the Tenants did not appear at the hearing, the Tenants application is dismissed without leave to reapply.

Issues to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to unpaid rent in the amount of \$1,685.00?

- May the Landlord retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The Landlord testified that the tenancy began on September 9, 2015, as a month to month tenancy. Rent in the amount of \$660.00 is payable on the first of each month. The Tenant paid the Landlord a security deposit of \$330.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants did not pay all the rent owed for the months of December 2015, March 2016, April 2016, May 2016, and June 2016.

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 10, 2016, ("the Notice") on May 10, 2016. The Landlord testified that the Tenants were served with the Notice in person at 9:00 a.m. at the rental unit.

The Notice states that the Tenants have failed to pay rent in the amount of \$930.00 which was due on May 1, 2016. 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 Tenant did not pay any rent to the Landlord after the Notice was issued.

The Landlord testified that the Tenants owe rent money for the following months:

- December 2015 in the amount of \$160.00
- March 2016, in the amount of \$30.00
- April 2016, in the amount of \$80.00
- May 2016, in the amount of \$660.00
- June 2016 in the amount of \$660.00

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$1,590.00.

The Landlord asks to keep the security deposit in partial satisfaction of the claim.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants have not paid the outstanding rent within five days of receiving the Notice. The tenants did not appear at the hearing and their application to dispute the Notice is dismissed. It is therefore conclusively presumed under section 46(5) of the *Act* that the Tenants have accepted that the tenancy ended on the effective date of the Notice.

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.

I find that the Tenants owe the Landlord \$1,590.00 for unpaid rent.

I order that the Landlord can keep the security deposit in the amount of \$330.00 in partial satisfaction of the claim for unpaid rent.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$1,690.00 comprised of \$1,590.00 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing. After offsetting the security deposit of \$330.00 towards the claim of \$1,690.00, I find that the Landlord is entitled to a monetary order in the amount of \$1,360.00. This monetary 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 the rent and did not appear at the hearing. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Tenants application is dismissed without leave to reapply.

I order that the Landlord can keep the security deposit in the amount of \$330.00 in partial satisfaction of the claim.

The Landlord is granted an order of possession effective 2 days after service on the Tenant and I grant the landlord a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$1,360.00.

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: June 17, 2016

Residential Tenancy Branch