



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

This hearing dealt with an application by the landlords for an order of possession and a monetary order. Although served with the Application for Dispute Resolution and Notice of Hearing by personal service on May 31, 2016, the tenant did not appear.

Issue(s) to be Decided

- Are the landlords entitled to an order of possession and, if so, on what terms?
- Are the landlords entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced October 1, 2015. The monthly rent of \$1395.00 is due on the first day of the month. The tenant paid a security deposit of \$697.50.

There is a written tenancy agreement with an addendum. One of the terms of the agreement states:

“The Tenant agrees to leave a full tank of furnace fuel at the end of the tenancy. If the Tenant does not provide a full tank of furnace fuel at the end of the tenancy, the Tenant agrees to pay the Landlord an amount equal the cost to refill/top up the tank to full capacity.”

On May 2, 2015 the landlord issued and posted a 10 Day Notice to End Tenancy for Non-Payment of Rent. That document includes information advising the tenant that the notice is cancelled if the tenant paid the arrears of rent within five days. It also advises that the tenant has five days to dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The landlord testified that the tenant did neither.

The landlords testified that the tenant only paid \$1000.00 towards the April rent, and nothing for May or June, and the arrears total 3185.00.

Analysis

The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Residential Tenancy Act* to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an order of possession effective two days after service on the tenant.

On their Application for Dispute Resolution the landlords claimed arrears of rent for the month of May only in the amount of \$1395.00. In the hearing the landlords also claimed unpaid rent for April in the amount of \$395.00; unpaid June rent in the amount of \$1395.00; and the anticipated cost of filling the fuel oil tank in the amount of \$580.00.

The procedure followed in this instance may have contributed to the landlords' failure to include loss of future rent on their application. The landlords originally filed their claim by Direct Request on May 2. In a decision dated May 24 the adjudicator ruled that service on the tenant by registered mail sent to a post office box did not allow him to confirm service of the Notice of Direct Request to the tenant and he ordered a participatory hearing. The landlords were directed to serve a Notice of Reconvened Hearing on the tenant within three days of receiving the Interim Decision. The landlords had the tenant personally served by a process server with the necessary documents on May 31.

The landlords' lawyer argued that there are decisions by other arbitrators that hold that since the tenant had notice that the landlord was going to continue to charge rent for as long as the tenant remained in the unit it was not a breach of natural justice to award a monetary order for arrears of rent accrued between the day the application for dispute resolution was filed and the eventual date of the hearing.

Section 64(2) provides that an arbitrator must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow decisions made by other arbitrators. While other decisions may not be binding on me, they can be instructive.

In this case the landlords filed copies of e-mail correspondence between the landlords and the tenant. It is clear from the correspondence that the tenant has had difficulty paying the rent and the landlords, while doing their best to accommodate the tenant's personal situation, continually pressed the tenant for payment of the rent.

On May 12, 2016 the tenant advised the landlords that: "We will not be out by the then you will have to proceed legally. I'm sorry but I'm buying time til we find something . . . I have already talked to the tenancy board they said if we ignore you have to get next

step then when we still don't move you have to wait for court date to have us removed by the sheriff. . “.

On May 30 the tenant send the landlords a payment proposal that said all the arrears for April and May; the June rent; and the July rent would be paid in full by July 1. The proposal was not accepted by the landlords.

In these particular circumstances I find that the tenant acknowledged the arrears owed; her obligation for payment of the rent while she was in occupation of the unit; and her understanding that the landlords expected to be paid rent for the time the tenant remained in occupation of the rental unit. Accordingly, I award the landlords the sum of \$3185.00 for arrears of rent for April, May, and June.

The tenancy requires the tenant to leave the fuel tank full at the end of the tenancy. Until the tenant vacates the rental unit it will not be known whether she has complied with the tenancy agreement or not. Accordingly, the claim for payment of fuel oil is dismissed with leave to re-apply.

Conclusion

- a. A order of possession effective two days after service has been granted to the landlords. If necessary this order may be filed in the Supreme Court and enforced as an order of that court.
- b. A monetary order in the amount of \$3185.00 has been granted to the landlords. I order that the landlords may retain the security deposit of \$697.50 in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance of \$2487.50. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

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 29, 2016

Residential Tenancy Branch