



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANDY CREEK HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail to both tenants on June 17, 2016. Canada Post tracking numbers were provided by the landlord in verbal testimony. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent (the landlord) appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the tenant's security deposit?

Background and Evidence

The landlord testified that this fixed term tenancy started on January 15, 2016 and is due to end on December 31, 2016. Rent for this unit is \$825.00 per month due on the 1st of each month. The tenants paid a security deposit of \$412.50 on January 12, 2016. The tenancy agreement names a different landlord as this landlord took over the building in April, 2016.

The landlord testified that the tenant failed to pay all the rent due on June 01, 2016 leaving an unpaid balance of \$825.00. The tenants paid \$100.00 towards that rent and a 10 Day Notice was served upon them on June 02, 2016 by posting the Notice to the tenants' door. This Notice stated they owed \$725.00 and had an effective date of June 12, 2016. The Notice was deemed to have been served three days after. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on June 12, 2016. The tenants did not pay the outstanding rent or file an application to dispute the Notice within five days; however, the tenants did pay the outstanding rent for June on June 20, 2016. Since that time the tenants have failed to pay rent for July, 2016 of \$825.00 and another 10 Day Notice was served upon them on July 04, 2016. To date no further rent payments have been made.

The landlord has applied to retain the tenants' security deposit of \$412.50 in partial payment of the rent arrears for July, 2016, to amend their application to recover unpaid rent for July, 2016 and has also applied for an Order of Possession to take effect as soon as possible.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlords. I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Paragraph 64(3)(c) of the *Act* allows me to amend an application for dispute resolution. At the hearing, the landlord asked to amend this application to include unpaid rent for July 2016. As the tenants reasonably ought to have known that this amount would accrue if they continued to occupy the rental unit after the effective date of the 10 Day Notice, I have allowed the amendment as there is no undue prejudice to the tenants. Consequently; I am satisfied from the evidence before me that there is outstanding rent for July of **\$825.00** and it is my decision that the landlord is entitled to recover this amount and will receive a Monetary Order pursuant to s. 67 of the *Act*.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$412.50** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$100.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$825.00
Filing fee	\$100.00
Less security deposit and accrued interest	(-\$412.50)

Total amount due to the landlord	\$512.50
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I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenants' door it was deemed served three days after posting on June 05, 2016. The effective date of the Notice is therefore amended to June 15, 2016 pursuant to s. 53 of the *Act*. The tenants did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective two days after service pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$512.50** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenants; if the tenants fail to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective **two days** after service upon the tenants. This Order must be served on the tenants; if the tenants fail to comply with the Order, the Order may be filed in the Supreme 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: July 19, 2016

Residential Tenancy Branch