



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 in person on July 22, 2016. The landlord amended his application on August 09, 2016 and served one tenant in person on August 09, 2016 and the other tenant in person on August 11, 2016.

The landlord appeared, gave sworn testimony, was 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 month to month tenancy started on December 01, 2009. Rent for this unit is currently \$1,800.00 per month due on the 1st of each month. The tenants paid a

security deposit of \$925.00 on November 26, 2009. A copy of the tenancy agreement has been provided in documentary evidence.

The landlord testified that the tenants failed to pay all the rent due for April, 2016 leaving an unpaid balance of 829.45. The tenants also failed to pay all the rent due for June, 2016 leaving an unpaid balance of \$100.00. The tenants failed to rent for July on the day it was due. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice) on July 02, 2016. This was served in person to the tenants. The tenants had five days to either pay the outstanding rent of \$2,729.45, apply for Dispute Resolution or the tenancy would end on July 12, 2016. The tenants did not pay the all the outstanding rent or file an application to dispute the Notice within the five allowable days. The tenants did pay the following amounts:

July 05, 2016 - \$100.00

July 07, 2016 - \$200.00

July 14, 2016 - \$800.00

July 21, 2016 - \$1,000.00

July 28, 2016 - \$900.00

This left the tenants with a credit of \$270.55 which was applied to rent for August, 2016. The landlord testified that the tenants paid \$700.00 on August 11, 2016. The total amount of unpaid rent for August is now \$829.45. The landlord testified that he informed the tenants that he was not going to reinstate the tenancy and that he was proceeding with his application for an Order of Possession as the outstanding rent was not paid in full within the five days allowed after the tenants were served with the Notice.

The landlord testified that the tenants also owe utilities for Hydro and water. The tenants were provided with a copy of the utility bills on June 30, 2016 but have failed to pay them. The landlord seeks to recover \$269.22 for Hydro and \$300.33 for water. The landlord has provided a copy of the utility bills in documentary evidence.

The landlord has applied to retain the tenants' security deposit of \$925.00 in partial payment of the rent and utility arrears. The landlord has also applied for an Order of Possession to take effect on August 31, 2016.

Analysis

I have carefully considered all the undisputed evidence before me, including the sworn testimony of the landlord. 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.

I am satisfied from the evidence before me that there is outstanding rent for August of \$829.45 and outstanding utilities for Hydro and water to a total amount of \$569.55. Consequently, it is my decision that the landlord is entitled to recover these amounts from the tenants.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of \$925.00 in partial payment of the rent and utility 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	\$829.45
Outstanding utilities	\$569.55
Filing fee	\$100.00
Less security deposit	(-\$925.00)
Total amount due to the landlord	\$574.00

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. 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 and must vacate the rental unit by the date shown on the Notice which in this case is July 12, 2016. As this date has since passed I grant the landlord an Order of Possession effective as requested on August 31, 2016, pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$574.00** 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 at **1.00 p.m. on August 31, 2016**. 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: August 25, 2016

Residential Tenancy Branch