



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The two tenants, "tenant HL" and "tenant SL" did not attend this hearing. The landlord's agent SS (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that on August 29, 2016 she forwarded the landlord's application for dispute resolution hearing package via courier to the tenants. The landlord provided a courier tracking number as proof of service. The landlord testified that the tenants avoided service.

The Residential Tenancy Branch Temporary Order that allows service of documents by courier establishes that applications are considered sufficiently served if the sender requests signature upon delivery and;

- the recipient of the documents signs a document provided by the courier which acknowledges receipt; or

- the courier leaves a notice of attempted delivery in the mailbox or posted to the door; or
- if the courier is not able to leave the notice of attempted delivery in the mailbox or posted to the door, the courier leaves the notice of attempted delivery in a conspicuous place and the sender provides proof that they have attempted to contact the recipient by telephone or email to inform the recipient of the attempted delivery; and
- any document sent by courier during this period is deemed to have been received on the actual date of delivery in cases where the recipient of the document signs a document acknowledging receipt, or on the 5th day after the document or the delivery attempt notice is sent, in any other case.

The landlord testified that the method of delivery she used required signature upon delivery. The landlord provided notes written by the courier delivery person indicating notices of attempted delivery where left at the rental unit on both August 30 and August 31, 2016. Additionally the notes reflect the courier left telephone messages on September 9 and September 15, 2016. Accordingly, I find that the landlord's application for dispute resolution hearing package was sufficiently served and deemed served on September 4, 2016, five days after the first notice of attempted delivery was left.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on April 1, 2013⁶ on a fixed term tenancy. Rent in the amount of \$1,175.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$687.50 at the start of the tenancy. The tenants continue to reside in the rental unit.

A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") for unpaid rent of \$4,125.00 due on August 1, 2016 was issued to the tenant on August 8, 2016 by way of posting to the rental unit door where the tenants reside. The notice indicates an effective move-out-date of August 21, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were served with the landlord's 10 Day Notice on August 11, 2016, three days after its posting.

The landlord seeks a monetary order of \$6,475.00 for unpaid rent from May 2016 to October 2016. The landlord claimed that the tenants paid a total of \$575.00 in rent for the above six months.

The landlord clarified that she was not seeking damages as the tenants have not vacated the rental unit to date.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenants may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenants do not pay the overdue rent or file an application, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenants were served with an effective notice. As the tenants did not pay the overdue rent or file an application to dispute the notice, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$1,175.00. I find the landlord provided undisputed evidence that the tenants failed to pay full rent from May 2016 to October 2016. Therefore, I find that the landlord is entitled to \$6,475.00 in rent.

Although the landlord filed for damages, she acknowledged this was done in error as the tenants have not vacated the rental unit to date. For this reason I dismiss the landlord's application for damages with leave to reapply.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$687.50 in partial satisfaction of the monetary award and I grant an order for the balance due \$5,787.50. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$5,887.50.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I dismiss the landlord's application for damages with leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$5,887.50 against the tenants.

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: October 18, 2016

Residential Tenancy Branch