



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M ROBINSON CONSULTANTS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

Both parties appeared gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issues to be Decided

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

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on June 1, 2015. Rent in the amount of \$800.00 was payable on the first of each month. A security deposit of \$400.00 was paid by the tenants.

The landlord testified that the tenants were not paying their rent on time and they came to an agreement that the tenants would pay rent in two payments of \$400.00 on the 1st and the 15th of each month. The landlord stated even after they tried to help the tenants they still did not pay rent on time.

The landlord testified that the tenants were served with a notice to end tenancy for non-payment of rent sent on August 2, 2016 by registered mail as the tenants had failed to pay rent in the amount of \$1,385.00. 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. Filed in evidence is a copy of the notice.

The landlord testified that the tenants did not pay the outstanding rent within five days as required and the tenants did not dispute the notice. The landlord stated that although the tenants have recently paid the outstanding rent they are not willing to continue the tenancy.

The landlord testified that they are agreeable to extend the effective vacancy date of the notice to October 31, 2016, only if rent for October 15 to October 31, in the amount of \$400.00 is paid today.

The tenant acknowledged they received the notice to end tenancy and they did not dispute the notice. The tenant acknowledged that the rent was not paid in full with five days as required by the Act. The tenant stated they have now paid all rent owed up to October 14, 2016.

The tenant testified that they have the balance of August 2016, rent and will send an email transfer to the landlord in the amount of \$400.00 to the landlord.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenants did not pay the outstanding rent within five days of receiving the notice, did not apply to dispute the notice, and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Although the tenants have paid all rent owed, I find the landlord did not reinstate the tenancy. 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 tenant.

As the landlord has agreed to extend the effective vacancy date subject to rent for October 15 to 31, 2016, being paid. I find it appropriate to make the following Orders.

I Order the tenants to pay the amount of \$400.00 to the landlord for the balance of October 2016, rent by email transfer to be sent no later than 6:00 pm today, October 14, 2016.

I further Order if the tenants comply with my above order, the order of possession cannot be enforced until October 31, 2016.

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 tenant.

As the landlord has been successful with their application, I find the landlord is entitled to recover the filing fee from the tenants. Therefore, I authorize the landlord to retain the amount of \$100.00 from the tenants security deposit in full satisfaction of this award.

Conclusion

The tenants failed to pay rent and did not file to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and may keep a portion of the security deposit in full satisfaction to recover the cost of the filing fee.

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 14, 2016

Residential Tenancy Branch