



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The landlords both attended the hearing, one of whom gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant attended the call. The landlord testified that the tenant was served with the application and notice of this hearing by registered mail on September 15, 2016 and the landlords were permitted to send proof of such mailing to me by facsimile after the hearing concluded. I have now received a Registered Domestic Customer Receipt and a cash register receipt from Canada Post bearing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this month-to-month tenancy began in September, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 per month is payable on the 1st day of each month. The landlords did not collect a security deposit from the tenant, but collected a \$200.00 pet damage deposit during the tenancy, which is still held in trust by the landlords.

The landlord further testified that the tenant failed to pay rent in full for the month of August, 2016 leaving \$130.00 outstanding. The tenant failed to pay any rent for September, 2016 and on September 2, 2016 the landlords personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated September 2, 2016 and contains an effective date of vacancy of September 12, 2016 for unpaid rent in the amount of \$1,230.00 that was due on September 1, 2016. The tenant has not paid any rent since the issuance of the notice and is now in arrears a total of \$3,130.00 to the end of this month, November, 2016.

The tenant has not served the landlords with an application for dispute resolution disputing the notice, and the landlords seek an Order of Possession and a monetary order in the amount of \$3,130.00, as well as recovery of the \$100.00 filing fee.

Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice by filing and serving the landlord with an application for dispute resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, I have reviewed the notice and find that it is in the approved form and it contains information required by the *Act*. I accept the testimony of the landlord that the tenant has not paid the rent, has continued to accumulate arrears, and has not served the landlords with an application for dispute resolution disputing the notice. I have no such application from the tenant before me, and therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlords are entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

With respect to the monetary claim, although the notice to end the tenancy specifies unpaid rent in the amount of \$1,230.00 that was due on September 1, 2016, I accept the undisputed testimony of the landlord that the tenant owes \$130.00 for August, 2016 rent, and \$1,000.00 per month for each of September and October, 2016. The tenant has not vacated the rental unit, and I am satisfied that the landlords will not be in a position to re-rent before the middle of this month, and I find that the landlords are entitled to compensation of half a months' rent for November, 2016.

Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee, and I grant the monetary order in favour of

the landlords totalling \$2,730.00 (\$130.00 August rent; \$1,000.00 September rent; \$1,000.00 October rent; \$500.00 November rent; \$100.00 filing fee = \$2,730.00).

The landlords have not applied for an order permitting the landlords to keep the pet damage deposit, and I order the parties to deal with it in accordance with the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,730.00.

This order is final and binding and may be enforced.

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: November 08, 2016

Residential Tenancy Branch