



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, 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;
- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not participate in the conference call hearing, which lasted approximately 17 minutes. The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlords testified that on December 21, 2016 they forwarded the landlord's application for dispute resolution hearing package via registered mail to each of the tenants. The landlords provided tracking numbers as proof of service. Based on the testimony of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the application on December 26, 2016, the fifth day after its registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to an order of possession for cause?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlord authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the testimony of the landlords, the tenancy began on November 15, 2011 on a fixed term until November 15, 2012 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$800.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$350.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

The landlords testified that rent was initially \$700.00 and gradually increased over the years. The latest increase which was agreed to by the tenants occurred in April of 2015. At this time the rent was set to \$800.00. The landlords testified that since April of 2015 the tenants regularly paid the \$800.00 rent until September 2016 at which time the tenants began to withhold \$100.00 each month.

In response to the tenants withholding rent, on November 28, 2016 the landlords personally served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") in the amount of \$300.00 due on November 1, 2016. The 10 Day Notice indicates an effective move-out-date of December 8, 2016.

On the same date the 10 Day Notice was served, the landlords personally served the tenants a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"). The 1 Month Notice indicates an effective move-out-date of December 31, 2016. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlords seek a monetary order of \$400.00 for unpaid rent from September 2016 to December 2016. The landlords claimed that the tenants paid a total of \$2,800.00 in rent for the above four months.

The landlords are also seeking to recover the \$100.00 filing fee for this application from the tenant.

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.

Section 47 of the *Act* establishes that tenants have 10 days from the date of service to dispute a 1 Month Notice by filing and serving the landlord with an application for dispute resolution. If the tenants fail to do so, the tenants are conclusively presumed to have accepted the 1 Month Notice.

Based on the landlords' testimony and the notices before me, I find that the tenants were served with effective notices. As the tenants did not file an application to dispute the notices, the tenants are conclusively presumed to have accepted that the tenancy ended, and must move out of the unit. As this has not occurred and the effective dates of tenancy have passed, 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, whether or not the landlord complies with this *Act*. 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.

Based on the undisputed testimony of the landlords, I find that the landlord proved that the current rent for this unit is \$800.00. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from September 2016 to December 2016. Therefore, I find that the landlord is entitled to \$400.00 in rent. As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$500.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the security deposit in the total amount of \$350.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$150.00.

Conclusion

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

I issue a monetary order in the landlords' favour in the amount of \$150.00.

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: January 19, 2017

Residential Tenancy Branch