



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTCOAST HOME REPAIR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNR

Introduction

On February 23, 2017, the Landlord submitted an Application for Dispute Resolution for an order of possession and for a monetary order for unpaid rent or utilities. The matter was set for a conference call hearing.

The Landlord attended the teleconference hearing; however, the Tenants did not. The Landlord provided affirmed testimony that the Tenants were served the Notice of Hearing by registered mail on February 27, 2017. The Landlord provided the registered mail tracking number as proof of service.

I find that the Tenants were duly served with the Notice of Hearing in accordance with sections 89 and 90 of the Act.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to a monetary order to recover unpaid rent?

Background and Evidence

The Landlord testified that the tenancy began on January 15, 2002. Rent in the amount of \$1,200.00 is to be paid on the first day of each month. The Tenant paid the Landlord a security deposit of \$550.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement for the month of January 2017.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 18, 2017, ("the Notice"). The Landlord testified the Notice was served in person on January 18, 2017. The Landlord provided a copy of the 10 Day Notice.

The Notice states that the Tenants have failed to pay rent in the amount of \$1,250.00 which was due on January 1, 2017. 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.

There is no evidence before me that the Tenants made an application to dispute the Notice.

The Landlord testified that the Tenants did not pay the rent that was due under the tenancy agreement within five days of receiving the 10 Day Notice.

The Landlord testified that the Tenant paid \$1,230.00 towards rent on February 16, 2017.

The Landlord testified that the Tenants have not paid the rent for February 2017, and March 2017.

The Landlord testified that the Tenants owe the following amounts of rent:

- January 2017, in the amount of \$20.00
- February 2017, in the amount of \$1,250.00
- March 2017, in the amount of \$1,250.00

The Landlord testified that he added \$50.00 to the amount owing for each month as a fee for late payment of rent. The Landlord testified that there is no term in the tenancy agreement that provides for that fee.

The Landlord seeks an order of possession and a monetary order for unpaid rent in the amount of \$2,520.00.

Analysis

Section 7 of the Residential Tenancy Regulation states that a Landlord can charge an administrative fee of not more than \$25.00 for late payment of rent if the tenancy agreement provides for that fee.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Landlord issued a 10 Day Notice to End Tenancy For Unpaid Rent to the Tenants on January 18, 2017. I find that the Tenants did not pay the outstanding rent within five days of receiving the Notice, and 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.

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 Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement is recoverable from the Tenants.

I find that the late payment fee of \$50.00 is more than the Regulations allow, and that there is no term in the tenancy agreement that permits the Landlord to charge a late payment fee. The Late payment fee is denied.

I find that the Tenants paid \$1,230.00 for January 2017, rent on February 16, 2017, but only owed \$1200.00. The Tenants do not owe any rent for January 2017, and have over paid in the amount of \$30.00.

I find that the Tenants have not paid the rent owing under the tenancy agreement for the month of February 2017. After applying the over payment of \$30.00 towards the rent, I find that the Tenants owe the Landlord \$1,170.00 for February 2017, rent.

I permit the Landlord to amend his claim to include unpaid rent for March 2017. The Tenants are still living in the rental unit and they know that they are required to pay their rent when it is due under the tenancy agreement. The Landlord has suffered a loss of rent for March 2017. I find that the Tenants owe the Landlord \$1,200.00 for March 2017, rent.

I grant the Landlord a monetary order for unpaid rent in the amount of \$2,370.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement is recoverable from the Tenants.

Conclusion

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

The Landlord is granted an order of possession effective 2 days after service on the Tenants and I grant a monetary order for the unpaid rent in the amount of \$2,370.00.

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: March 22, 2017

Residential Tenancy Branch