



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mnr, opr, ff

Introduction

The landlords request an Order of Possession and a Monetary Order for unpaid rent.

Both parties attended the hearing. The tenants acknowledged receiving notice of this hearing.

The tenants requested an adjournment of the hearing, on ground that they did not want to speak directly to the landlord's agent, and that they had not had sufficient time to prepare. The landlord was not agreeable to an adjournment. I denied the request. I directed that the parties address only me with their submissions and not each other, and I determined that since the key issue was dealing with the ending of the tenancy on the basis of unpaid rent, the tenants could rely upon their memory, and in any event had sufficient time to consider their reply.

Issues to Be Decided

- Is the landlord entitled to an Order of Possession?
- Is there rent money due and payable by the tenants?

Background and Evidence

This tenancy began on May 1, 2014. Rent is due on the 1st day of each month in the amount of \$1,100.00. The landlord testified that the tenants were served with a 10-Day Notice to End Tenancy on February 2, 2017, given for non-payment of rent. The Notice was put into the tenants' mailbox. The landlord testified that currently the amount owed in unpaid rent is \$2,100.00.

The tenants testified they never received the 10 day Notice. They have moved out of the premises, alleging the premises are uninhabitable, and will have all their belongings moved out by March 31, 2017. They did not pay their rent, because two trees fell on their roof, and the landlord said he did not expect them to pay rent as a result.

The landlord testified the Notice was gone from the mailbox within one or two days. He denied there was ever an agreement that the tenants not pay rent, and given the acrimonious nature between them, any such agreement would not have been verbal, but would have been made in writing. He denied the premises were uninhabitable. The landlord was agreeable that an Order of Possession be issued effective March 31, 2017.

Analysis

Section 88 of the Residential Tenancy Act permits service of a Notice by leaving a copy in a

mail box. I accept the landlord's testimony that the Notice was served in this way, and that it was gone with one of two days. Pursuant to section 90, the tenants were deemed to receive this Notice on the 3rd day after it was left.

In the absence of the required rental payment, or a dispute of the notice within the 5 day period set out in the Notice, the tenants are conclusively presumed to have accepted the end of the tenancy agreement on the effective date of the Notice, by virtue of section 46(5)(a) of the Residential Tenancy Act. As the effective date of the Notice has passed, the landlords has established a right to possession.

I add that even if I had found that the Notice had not been properly served upon the tenants, given that the tenants submitted they have vacated the premises because they are uninhabitable, section 56.1 would permit me to issue an Order of Possession to the landlord.

An Order of Possession is therefore issued, effective March 31, 2017.

The tenants do not dispute that the claimed rent was not paid, but submit there was a verbal agreement they did not have to pay it. The landlord denies any such agreement, and the tenants have therefore not proven on a balance of probabilities that such an agreement was ever made. I also note that section 26(1) requires that a tenant must pay rent, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. Accepting that the sum of \$2,100.00 is owed (two month's rent, less the repayment of the tenant's filing fee from a prior hearing), this sum may be recovered by the landlord from the tenants, together with recovery of the landlord's \$100.00 filing fee.

Conclusion

Pursuant to Section 55(2)(b) of the Residential Tenancy Act, I issue an Order of Possession effective March 31, 2017. Should the tenants fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlords may recover the sum \$2,200.00 from the tenants, representing the unpaid rent and recovery 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: March 24, 2017

Residential Tenancy Branch

