



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This is an amended application brought by the Landlord(s) requesting an Order of Possession, based on Notice to End Tenancy for nonpayment of rent, and requesting a monetary order for outstanding rent and recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Preliminary Matter

The respondent had sent a DVD which they state contained evidence for today's hearing, however, the copy received by the residential tenancy branch was blank, plus the tenants testified that they did not serve a copy of the same evidence on the landlord.

I therefore informed the tenants that, not only was the DVD blank, it would not have been admissible anyway, as they had failed to serve a copy on the landlords, as required under section 3.15 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

The issues are whether or not the landlord has established the right to an Order of Possession and whether or not the landlord has established monetary claim against the respondents, and if so in what amount.

Background and Evidence

On January 23, 2017 the parties signed an agreement for a tenancy to begin on January 23, 2017, for a fixed term ending January 31, 2018, and with a monthly rent of \$2500.00.

The parties agree that the landlord served a 10 month Notice to End Tenancy in February, 2017

The landlord testified that the tenants failed to pay the prorated January rent and therefore he believes there is \$880.00 rent outstanding for the month of January 2017.

The landlord further testified that the tenants have also failed to pay \$500.00 of the March 2017 rent.

The landlord is therefore requesting an Order of Possession for as soon as possible, and a monetary order as follows:

January 2017 rent outstanding	\$880.00
March 2017 rent outstanding	\$500.00
Filing fee	\$100.00
Total	\$1480.00

The tenants testified that the landlord had agreed that, although the tenancy agreement began on January 23, 2017, the tenants would not have to pay any rent for the month of January 2017. The tenants further testified that they did not actually move into the rental unit until January 28, 2017, and therefore they do not believe there is any rent outstanding for January 2017.

The tenants further testified that they do not dispute that there is \$500.00 rent outstanding for March 2017.

The tenants further testified that they have not filed any dispute of the 10 day Notice to End Tenancy; however they believe it should be canceled as there was no rent outstanding for January 2017, and all outstanding February 2017 rent was paid within five days of receiving the notice.

In response to the tenant's testimony, the landlord testified that the tenants were never told that they would not be required to pay any rent for January 2017.

Analysis

It is my finding that the tenants have not met the burden of proving their claim that the landlord had agreed that they would not be required to pay any rent for the month of January 2017. The burden of proving a claim lies with the person making the claim, and, when it is just that person's word against that of the other, that burden of proof is not met. In this case it is just the tenants word against that of the landlord, and in the absence of any supporting evidence, the tenant has failed to meet the burden of proof.

Therefore it is my decision that the landlord did have the right to end the tenancy with a 10 day Notice to End Tenancy for nonpayment of rent, and I therefore allow the landlords request for an Order of Possession.

It is my finding that the prorated rent for nine days in January 2017 is outstanding as follows:

\$2500.00 divided by 31 days equals \$80.65 per day multiplied by the nine days equals \$725.85. I therefore allow \$725.85 of the landlords claim for outstanding January 2017 rent.

Further, since the tenants admit that they have not paid \$500.00 of the March 2017 rent I also allow that portion of the landlords claim.

Having allowed the majority of the landlords claim, I also allow the request for recovery of the \$100.00 filing fee. Therefore the total claim I have allowed is as follows:

January 2017 rent outstanding	\$725.85
March 2017 rent outstanding	\$500.00
Filing fee	\$100.00
Total	\$1325.85

Conclusion

Pursuant to sections 46 and 55 of the Residential Tenancy Act I have issued an Order of Possession that is enforceable two days after service on the respondents.

Pursuant to sections 67 and 72 of the Residential Tenancy Act I have issued a monetary order in the amount of \$1325.85. The remainder of the landlord's monetary claim is dismissed without leave to reapply.

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 30, 2017

Residential Tenancy Branch